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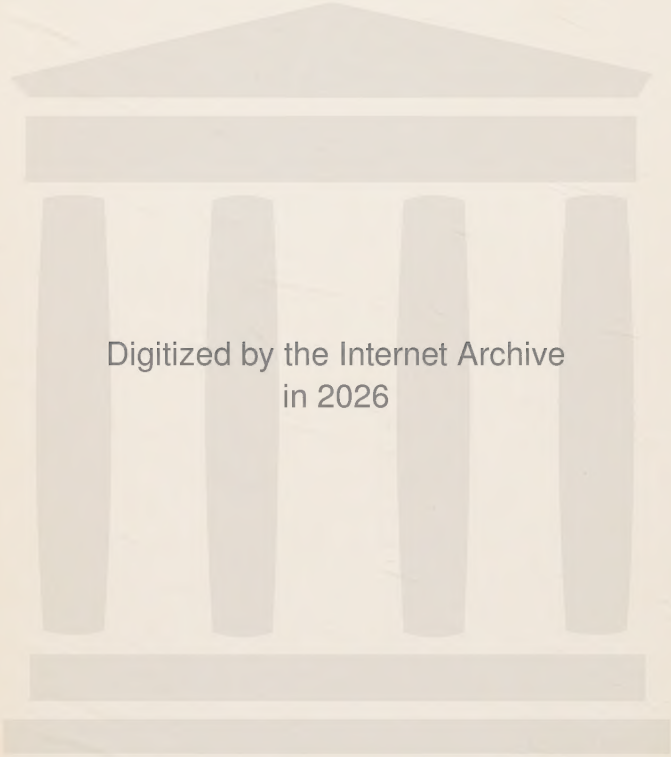
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ENGLISH CHURCH LAW AND DIVORCE

De nō licentia a diuortio facto respondit ffra
nomd in 120 cōsequd

Quia pondus hui⁹ disputatois potissimū pendet ex illo loco
Matth⁹ 19ⁿᵒ videlicet qui dimiserit vxorem suam nisi of fornicatoem
ſ⁹ Operepti⁹ erit de genuino sensu illius loci exactius disserere
ſ⁹ contextus circūſtantias diligentius examinare .....

Primo aīaduertendū occurrit quo in tempore et cū quibus christ⁹
tūc sermone habebat At planissimū est quod eo tempore apud
iudeos cū quibus chr⁹ tūc sermone habebat vigebat lex qua morte
plectebat² ſtupri cōvicta cōsentanea g erit quod ſerendū vigore
illius legis pfatus sermo ſit interpretandus . Cuius lege obſnata
dimittenti ob fornicatoem licebat altera ducere nimiq; morte
puniebat² cōvicta ſtupri. ceteris autem de cauſis propt quas ſcilz
nō inferebatur mors nō fuit oīno licitū :

Hec expoſitio optime concordat Matth⁹ cū nō modo cū Marco et Luca qui
oīno vetant altera (priore dimiſſa viuente) ducere nulla exceptione adhibita :
Verū etiā cū paullo Ro 7 vbi docet vinculū hoꝝ nō poſſe diſſupi
niſi morte dutaxat alterius cōiugis ſ⁹ Corinthioꝝ 7 hortat²
vt nō diſcedat. quod ſi diſceſſerit iubet manere innupta aut
viro ſuo reconciliari: q⁹ locū illū Matth de ſtupro mortis pena
annexam habente ſubelligere debem⁹ ꝛ ſic conueniet omnia
ſ⁹ omnis ambiguitas e medio prorſus tollit²

Perpendatur inſup et illud quod Matth⁹ primū oīm Euangelium
ſuū ſcripſit hebraice propt eos qui ex circūciſione crediderant, teſte
Hieronymo deinde poſt annos aliquot Marcus petri comes et diſci
pulus Rhomæ degens ab eis, qui nō ſolū ex iudeis verū etiam ex

English Church Law and Divorce

PART I

NOTES ON THE *REFORMATIO LEGUM ECCLESIASTICARUM*

BY

SIR LEWIS DIBDIN, D.C.L.
DEAN OF THE ARCHES

PART II

NOTES ON THE DIVORCE AND RE-MARRIAGE OF SIR JOHN STAWELL

BY

SIR CHARLES E. H. CHADWYCK HEALEY,
K.C.B., K.C.
CHANCELLOR OF THE DIOCESE OF EXETER

WITH APPENDICES

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PREFACE

These notes would probably not have been written but for the discussions as to the attitude of the Church of England in relation to Divorce, raised by witnesses before the late Royal Commission on that subject. The Divorce Commission of 1853 reported that as a matter of fact Divorce *a vinculo* had been granted by the English Church Courts during the half-century which followed the compilation of the *Reformatio Legum*, and that that work, although not formally authorized and indeed for a great portion of the period not even in print, had nevertheless been virtually in operation until the beginning of the seventeenth century. As these statements were repeated and relied on in the evidence before the recent Commission, it seemed desirable that the matter should be more fully investigated, and with that object a memorandum was prepared and added to the other evidence (Minutes of Evidence, vol. iii, pp. 42-58). This memorandum has since been considerably enlarged and, so enlarged, forms Part I of this book. The opportunity has been taken to give in more detail than has been hitherto done the history of the preparation of the *Reformatio Legum*. Part II consists of an account of the important but little known divorce case of Sir John and Lady Stawell, the facts of which are now for the first time published. The Appendices to Parts I and II contain such of the more important documents, referred to in the text, as are not easily accessible, and indeed for the most part have not hitherto

existed, in print. Of these the longest and most noteworthy is Cranmer's *Collectiones de divortio* (App. E.), a MS. in Lambeth Library. In it are found many notes by Archbishop Cranmer himself, which seem to throw a new light on his opinions in regard to Divorce. We desire to thank the Archbishop of Canterbury for permission to copy and publish this MS.

We are greatly indebted to the Rev. Claude Jenkins, the Lambeth Librarian, for the invaluable assistance he has rendered in respect of Part I and its Appendices, by copying this MS., writing the introduction to it, compiling the Index, reading proofs, and helping in other ways. Many of the extracts from the works of writers of the sixteenth century were furnished by Mr. Jenkins, and but for his learning and industry would not have been discovered. Much assistance in searching for and copying records of cases in the Ecclesiastical Courts has been received and is gratefully acknowledged in the text and footnotes, but special mention should be made of our obligations in this respect to Mr. Kenneth Munro and Mr. W. J. Hardy, F.S.A., who have given valuable help in the preparation of Part I. In the text, as distinguished from the Appendices, modern spelling has, for the sake of clearness, been generally employed.

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PART I

NOTES ON THE "REFORMATIO LEGUM ECCLESIASTICARUM" AND ITS RELATION TO ECCLESIASTICAL LAW AND PRACTICE IN THE SIXTEENTH CENTURY

I

THE PRODUCTION OF THE REFORMATIO LEGUM

THE history of the *Reformatio Legum Ecclesiasticarum* begins with the statute 25 Hen. VIII, ch. 19 (Submission of the Clergy), which recites that

whereas divers constitutions ordinances and canons provincial or synodal which heretofore have been enacted and be thought not only to be much prejudicial to the King's prerogative royal and repugnant to the laws and statutes of this realm but also overmuch onerous to his Highness and his subjects; the s^d^ clergy hath most humbly besought the King's Highness that the s^d^ constitutions and canons may be committed to the examination and judgment of his Highness and of two and thirty persons of the King's subjects, whereof sixteen to be of the Upper and Nether House of the Temporalty, and the other sixteen to be of the clergy of this realm; and all the said two and thirty persons to be chosen and appointed by the King's Majesty; and that such of the s^d^ constitutions and canons as shall be thought and determined by the s^d^ two and thirty persons or the more part of them worthy to be abrogated and annulled shall be abolite and made of no value accordingly; and such other of the same constitutions and canons as by the s^d^ two and thirty or the more part of them shall be approved to stand with the laws of God and consonant to the laws of this realm shall stand in their full strength and power, the King's most royal assent first had and obtained to the same.

By the second section it was enacted:

And forasmuch as such canons constitutions and ordinances as heretofore have been made by the clergy of this realm cannot now at the session of this present parliament by reason of shortness of time be viewed examined and determined by the King's Highness and thirty two persons to be chosen and appointed according to the petition of the s^d^ clergy in form before rehearsed: be it therefore enacted by authority aforesaid that the King's Highness shall have power and authority to nominate and assign at his pleasure the said two and thirty persons of his

subjects whereof sixteen to be of the clergy and sixteen to be of the temporalty of the Upper and Nether House of the Parliament; and if any of the said two and thirty persons so chosen shall happen to die before their full determination then his Highness to nominate other from time to time of the s^d^ two Houses of the Parliament to supply the number of the said two and thirty; and that the same two and thirty by his Highness so to be named shall have power and authority to view search and examine the s^d^ canons constitutions and ordinances provincial and synodal heretofore made and such of them as the King's Highness and the s^d^ two and thirty or the more part of them shall deem and adjudge worthy to be continued kept and obeyed shall be thenceforth kept obeyed and executed within this realm so that the King's most royal assent under his great seal be first had to the same; and the residue of the said canons constitutions and ordinances provincial which the King's Highness and the said two and thirty persons or the more part of them shall not approve or deem and judge worthy to be abolite abrogate and made frustrate shall from thenceforth be void and of none effect and never be put in execution within this realm.

This Act received the Royal Assent on 30th March 1534.[1] The thirty-two commissioners were not in fact appointed under this Act, and in 1535-6 the Act 27 Hen. VIII, ch. 15, was passed, which, after stating that "forasmuch as the King's Highness hath not named and assigned the s^d^ 32 persons since the making of the s^d^ Act" (*i.e.*, 25 Hen. VIII, ch. 19), authorized the King to do so "as well before as after the dissolution of this present Parliament," and empowered the thirty-two commissioners when nominated to act "at all times from henceforth for the term of three years next after the dissolution of this Parliament." This Parliament was dissolved 4th April 1536. Still the commissioners were not appointed. In 1543-4 the Act 35 Hen. VIII, ch. 16, was passed. After reciting 27 Hen. VIII, ch. 15, this statute continued:

Since the making of which Act divers urgent and great causes and matters have occurred and happened whereby the s^d^ nomina-

[1] Throughout this work years are reckoned as beginning on the 1st January.

tion and appointment of the s^d^ 32 persons by the King's Highness have been omitted whereby the s^d^ search view and examination of the s^d^ canons constitutions ordinances provincial and synodal have not been had nor made according to the tenor purport and effect of the same Act.

A fresh power was then conferred on the King to appoint thirty-two commissioners as in the former Acts, but with two important extensions. First, Henry VIII was empowered to act in the matter at any time during his life, with no limitation to a period of three years, or to the duration of the existing Parliament. Secondly, the scope of the work of the thirty-two commissioners, which had hitherto been confined to the collection and revision of existing canons, was now enlarged so as to include the framing of new ecclesiastical laws. The reference to the thirty-two commissioners is stated thus:

To peruse oversee and examine all manner of canons constitutions ordinances provincial & synodal and further to set in order & establish all such laws ecclesiastical as shall be thought by the King's Majesty and them convenient to be used and set forth within his realm and dominions in all spiritual courts and conventions.

There is no evidence extant in the Public Record Office of a commission having been actually appointed under 35 Hen. VIII, ch. 16.

Burnet (Hist. Reformation, part ii, Bk. I, p. 196, ed. 1681), Strype (Memls. Cranmer, Bk. I, chap. xxx, p. 133), Reeves (Hist. of English Law, Finlason's ed., vol. iii, p. 495), Collier (Ecc. Hist., ed. 1840, vol. v, p. 141), and Cardwell (Doc. Ann., vol. i, p. 107 *n.*), all state that a commission was issued under that Act. Their opinion seems to be based on a letter written by Cranmer to Henry VIII, dated 24th January 1546 (Burnet, Hist. Ref., part ii, Bk. I, Coll. Rec., No. 61), in which he states that he had sent for Heath, Bishop of Worcester, and had

declared unto him all your Majesty's pleasure in such things as your Majesty willed me to be done. And first where your

Majesty's pleasure was to have the names of such persons as your Highness, in times past, appointed to make Laws Ecclesiastical for your Grace's Realm. The Bishop of Worcester promised me with all speed to inquire out their names and the Book which they made and to bring the names and also the Book unto your Majesty, which I trust he hath done before this time.

Foxe (1517-87), the martyrologist, in his preface to the first printed edition of the Reformatio Legum (1571), also states that Henry VIII appointed commissioners and that they actually performed their task at least to some extent.

. . . Quocirca cum ex ipsius tum ex publico senatus decreto delecti sunt viri aliquot, usu et doctrina praestantes numero triginta duo qui penitus abolendo pontificio juri (quod canonicum vocamus) cum omni illa decretorum et decretalium facultate, novas ipsi leges, quae controversiarum et morum judicia regerent, regis nomine et authoritate surrogarent. Id quod ex ipsius regis epistola quam huic praefiximus libro, constare poterit, quae et serium ipsius in hac re studium et piam voluntatem aperiat. Laudandum profecto regis propositum nec illaudandi fortassis eorum conatus qui leges tum illas licet his longe dissimiles conscripserant. (Cardwell's edition of Reformatio Legum, 1850, p. xxiv.)

The title of Foxe's edition (and of the subsequent reprints in 1640 and 1641) testifies to the same fact though it does not specifically mention the commission:

Reformatio Legum Ecclesiasticarum ex authoritate primum Regis Henrici 8, inchoata: Deinde per Regem Edouardum 6 provecta adauctaque in hunc modum atque nunc ad pleniorem ipsarum reformationem in lucem aedita.

Strype (Memls. Cranmer, Bk. I, chap. xxx, p. 132, etc.) gives a circumstantial account (partly founded on Cranmer's letter already quoted) of Cranmer's appeal to Henry VIII in 1545-6, to ratify the draft of the new ecclesiastical laws then described as complete, and Strype mentions the draft letter which had been drawn up for the king's signature in order to give official

sanction to the new code. This letter, which Henry never signed, is prefixed to all four of the printed editions of the Reformatio Legum. No further step is known to have been taken in Henry VIII's reign. Strype (Memls. Cranmer, Bk. I, chap. xxx, p. 133) writes:

> But whatsoever the matter was, whether it were the king's other business, or the secret oppositions of Bishop Gardiner and the papists, this letter was not signed by the king.

Collier (Ecc. Hist., vol. v, p. 141) writes:

> But it seems his Highness [Henry VIII] received advice from the Bishop of Winchester [Gardiner] that in case the king proceeded to any innovation of this kind the league now concerting with the emperor would miscarry. And thus it is probable, for reasons of state, the king refused the signing the instrument.

Burnet (Hist. Ref., part i, Bk. III, p. 330), after stating Cranmer's anxiety to procure an authorized revision of the Canon Law, writes:

> But it was found more for the greatness of the Prerogative and the Authority of the Civil Courts to keep that undetermined; so he could never obtain his desire during this king's reign.

Foxe, in his preface quoted above, writes:

> Yet somehow or other at every turn the project failed to succeed, perhaps owing to the troublous times, perhaps to the lack of perseverance of those to whom the business was then entrusted.[1]

There appears to be no means of ascertaining how far the code prepared in Henry VIII's reign differed from the Reformatio Legum as it was formulated in Edward VI's reign, and as we have it to-day. The only contemporary MS. is of the Reformatio in its second

[1] Sed nescio quo modo quaque occasione res successu caruit, sive temporum iniquitate, sive nimia eorum cessatione quibus tunc negotium committebatur. (Cardwell's ed. pref. xxiv.)

or Edwardian stage. It may, however, be safely assumed that Foxe was right in saying, as he does in the preface already quoted, that the code as it was compiled in Henry's time was "far different" from the Reformatio of the next reign.

The latter contains many express references to statutes and books of Edward's time. (*See* Cardwell's Reformatio Legum, Preface of 1850, p. vii, note *c*.) It is also to be noted that the doctrinal statements in the Reformatio, though exactly what we should expect in the later years of Edward's reign, are difficult to conceive as having been proposed to Henry VIII for approval in or about 1545-6, so near the time of the Six Articles and the publication of the "King's Book." Compare, for example, the view of Sacraments generally, and the Sacrament of the Altar in particular, in the Reformatio (De Sacramentis, caps. 2 and 4, pp. 30-31, Cardwell's ed.) and in the "King's Book" (Formularies of Faith, pp. 262, 269, 293).

Henry VIII died on the 28th January 1547, and with him passed away the power to revise the Canon Law created by 35 Hen. VIII, ch. 16. It will be remembered that the authority to appoint commissioners for that purpose was conferred on Henry VIII personally, though made exerciseable by him at any time during his life. Early in Edward VI's reign the matter was again exciting attention. Convocation met in 1547, and the Lower House of Canterbury presented a petition to the Archbishop asking that in accordance with the statute 25 Hen. VIII, ch. 19, the long deferred commission of thirty-two persons should be constituted so that the Church might no longer remain without definite laws (Gairdner's Hist. Ch. of England, Henry VIII, p. 251).

The further progress of the scheme, however, seems to have been brought about rather by the House of Commons than by the bishops and other clergy. On 14th November 1549, all the bishops joined in a complaint to the House of Lords that owing to the recent

changes which had practically abolished the spiritual jurisdiction of the Church Courts (1 Edw. VI, ch. 2), vice and disorder were rampant and could not be repressed. The Lords at first desired the bishops to frame a Bill, which, however, when it was produced, was considered as giving too much power to the hierarchy, and a large committee of bishops, lay peers, judges, and law officers was appointed to draw up another Bill. This they did, and the Lords passed the Bill, but the Commons, after a second reading, "laid it aside," and, as a substitute, revived the scheme for the revision of the Canon Law by a commission of thirty-two (Hansard, Parl. Hist., vol. i, p. 591). Their Bill for this purpose was finally read a third time in the Lords on 31st January 1550, Archbishop Cranmer and several of the bishops dissenting (Journal of H. of Lords, vol. i, p. 387). We do not know the ground of this opposition. Collier Hist., ed. 1840, v, 373) thinks one reason may have been that the Bill did not require the appointment on the Commission of more than four bishops. It would seem more probable that Cranmer and the bishops desired to mark their sense of the inadequacy of the step taken to cope with the evils of which they had complained. At any rate it is important to notice that the reappearance of the commission of thirty-two was not due to their initiative but to that of the Commons, and that it was actually opposed by Archbishop Cranmer.

The Bill received the Royal Assent on 1st February 1550, and became the statute 3 & 4 Edw. VI, ch. 11. After reciting that

> Albeit the King's most excellent Majesty Governor and Ruler under God of this Realm ought most justly to have the government of his subjects and the determination of the causes as well ecclesiastical as temporal; yet the same as concerning ecclesiastical causes having not of long time been put in ure nor exercised by reason of the usurped authority of the Bishop of Rome, be not perfectly understood nor known of his subjects and therefore of necessity as well for the abolishing and putting in utter oblivion of the s[d] usurped authority as for the necessary administration of justice to his loving subjects,

it was enacted

That the King's Majesty shall from henceforth during three years have full power authority and liberty to nominate and assign by the advice of his Majesty's Council sixteen persons of the Clergy whereof four to be Bishops and sixteen persons of the Temporalty whereof four to be learned in the common laws of this Realm to peruse and examine the ecclesiastical laws of long time here used and to gather order and compile such laws ecclesiastical as shall be thought by his Majesty his s[d] Council and them or the more part of them convenient to be used practised and set forth within this his realm and other his dominions in all and particular ecclesiastical courts and conventions.

It was also enacted that the revised and new laws were to be promulgated by Letters Patent, and were not to be contrary to statute or common law. This statute was passed early in 1550, but in accordance with the then practice it would date from the first day of that session, namely, the 4th November 1549, and the three years' period for the exercise of its powers must therefore be measured from this date, and would expire on the 4th November 1552.

It appears from the Minute of a Privy Council held at Hampton Court on the 6th October 1551 (Acts of the Privy Council, 1550-2, p. 382), that the Lord Chancellor was directed to

make out the King's letters of commission to the xxxii persons hereunder written authorising them to assemble together and resolve upon the reformation of the Canon Laws as by the minute of the s[d] letter at better length appeareth.

Bishops.	Divines.
Canterbury.	Taylor of Lincoln.
London.	Cox—Almoner.
Winchester.	Parker of Cambridge.
Ely.	Latimer.
Exeter.	Cooke.
Gloucester.	Peter Martyr.
Bath.	Cheke.
Rochester.	John Alasco.

Civilians.	Lawyers.
Petre.	Hales—Justice.
Cecil.	Bromley—Justice.
Sir T. Smith.	Goodrick.
Taylor of Hadley.	Gosnold.
Dr May.	Stamford.
Traheron.	Carrell.
Dr Lyell.	Lucas.
Skinner.	Brooke, Recorder, London,

viii of these to rough hew the Canon Law, the rest to conclude it afterwards.

It is stated in Foxe's preface (already quoted) to the 1571 edition of the Reformatio that the commission was actually appointed, and that a plan of procedure was followed by which the whole body divided into four committees of eight, each consisting of two bishops, two divines, two civilians, and two lawyers, and arranged that "what each committee put into shape should be passed on to the other committees for consideration." (*See also* Strype's Memls. Cranmer, Book II, chap. xxvi, p. 273, etc.)

There appears to be no evidence amongst the Public Records that the commission actually issued, and the terms of the subsequent Letters Patent of the 11th November 1551 suggest a doubt whether the commission of thirty-two had at that date been already constituted. (Cardwell's edition of the Reformatio Legum, Pref. of 1850, p. vii, note *d*.) On the other hand, Dr. Gairdner (Hist. Ch. England, p. 300) states that the whole thirty-two commissioners were really appointed on the 6th October 1552 (this must be a mistake for 1551).

On the Patent Rolls for the regnal year 5 Edw. VI there is a commission dated the 4th November 1551, and addressed to Cranmer, Ridley, Cox, Peter Martyr, Taylor (of Hadley), Traheron, Lucas, and Gosnold. It directed them to prepare and reduce to writing a draft code of reformed ecclesiastical laws in order that it might subsequently receive the final revision and ratification of the whole body of thirty-two of which the eight

were members. According to Strype (Memorials, Book II, chap. viii, p. 303), who mentions this commission on the authority of "Warrant Book," it was dated the 22nd October 1551.

On the 11th November 1551 another commission of eight, chosen from the whole body of thirty-two, was issued. This commission was substantially in the same terms as that of the 4th November, which it superseded.

It appears from the Minute of a Privy Council held at Westminster on the 9th November 1551 (Acts of the Privy Council, 1550-2, p. 410) that the Lord Chancellor was directed

> to make out a new Commission to these viii persons here under named for the first drawing and ordering of the Canon Laws, for that some of those other that were before appointed by the King's Majesty [*i.e.*, by the Commission of 4th November 1551] are now by his Highness thought meet to be left out and the Commission made to these following—The Abp. of Canterbury, B^p^ of Ely [Goodrick], D^r^ Cox, Peter Martyr, D^r^ Taylor of Hadley, D^r^ May, J. Lucas, R. Goodrick.

It will be observed that the Bishop of Ely, Dr. May, and Mr. Goodrick were substituted for the Bishop of London (Ridley), Mr. Traheron, and Mr. Gosnold. A copy of this commission is prefixed to all the printed editions of the Reformatio Legum, and is dated the 11th November 1551. The commission is extant on the Patent Rolls for 5 Edw. VI under date 11th November 1551.

Since to these eight commissioners, selected it would seem with critical care, was specially committed the task of preparing the Reformatio Legum, it is material to note who they were. Archbishop Cranmer at this time was much under the influence of the foreign Protestants, of whom Peter Martyr (himself one of the eight), Martin Bucer, and Henry Bullinger were typical representatives and leaders. Although not one of the eight, a distinguished member of the commission of thirty-two was John a Lasco, a Polish nobleman and refugee who was appointed first pastor of the church in St. Austin's

Friars and of the Dutch congregation in London, to which the King gave the Church for worship. A Lasco was on intimate terms of friendship with the dominant party in Edward VI's reign (*see* Strype's Memorials, Bk. I, chap. xxix, p. 240, etc.). Of the rest Richard Cox (described as a great harbourer of foreign divines),[1] Roland Taylor of Hadley, and William May, Dean of St. Paul's, belonged to the same party. Thomas Goodrick, Bishop of Ely, appears to have opposed the others and to have been overborne (*see* p. 17).[2] R. Goodrick, a nephew of the Bishop of Ely, and J. Lucas, a Master of Requests, were lawyers presumably required to look after the technical matters (such as procedure and pleadings) with which the Reformatio Legum largely deals.

It appears from a minute of a Privy Council held at Westminster on the 2nd February 1552 (Acts of the Privy Council, 1550-2, p. 471) that the Lord Chancellor was on that day directed

> to make out a Commission to the Abp. of Canterbury and others, Bishops, learned men, civilians and lawyers of the realm for the establishment of the ecclesiastical laws according to the Act of Parliament made last Sessions.

This commission is extant on the Patent Rolls for 6 Edw. VI, and is dated the 12th February 1552.[3] The names of the thirty-two commissioners are :

Bishops.	Divines.
Canterbury.	J. Taylor of Lincoln.
London.	R. Cox.
Winchester.	M. Parker.
Ely.	A. Cooke.
Exeter.[4]	Peter Martyr.
Gloucester.	J. Cheke.
Bath and Wells.	John Alasco.
Rochester.	N. Wotton.

[1] Dict. Nat. Biog., art. Rich. Cox, vol. xii, p. 412.
[2] Original Letters, P.S., vol. ii, p. 580.
[3] See a copy of this Commission, Appendix A.
[4] The patent has "Miloni Oxoniensi Episcopo," but this is plainly a slip for "Miloni Exoniensi Episcopo." The Bishop of Oxford at

Civilians.	Lawyers.
W. Petre.	J. Hales.
W. Cecil.	T. Bromley.
W. Cooke.	R. Goodrick.
R. Taylor of Hadley.	J. Gosnold.
W. May.	W. Stamford.
B. Traheron.	J. Carrell.
R. Lyell.	J. Lucas.
R. Reade.	R. Brooke.

It will be noted that these names are the same as those (given above) in the intended commission of 6th October 1551, except that Bishop Latimer, Sir Thomas Smith, and Skinner are omitted, and Wotton, W. Cooke, and R. Reade are substituted. Edward VI's Journal (Burnet's Hist. Ref., part ii, Bk. I, Coll. Rec. no. 1, p. 46, ed. 1681) under date 10th February 1552, records "Commission was granted out to 32 persons to examine, correct and set forth the Ecclesiastical Laws." The names of thirty-one persons only follow. These are the same as those (given above) in the Commission of 12th February 1552, on the Patent Rolls, except that Wotton, Lyell, and Brooke are omitted in the King's Journal, and Skinner and Gawdy are added.

There seems to be no satisfactory evidence as to what in fact happened after these commissions had been issued. Foxe, in his preface to the 1571 edition of the Reformatio, seems to say that the work was done and completed by the whole body of thirty-two sitting in sub-committees in the manner already described. Strype (Life of Parker, Bk. IV, chap. v, p. 323), after referring to the commissions, writes: "The work was closely plied and finished by the foresaid learned and excellent men under King Edward and put into very elegant Latin by the pens of Dr. Haddon and

this date was Robert King. Miles Coverdale, Bishop of Exeter, is no doubt meant.

Sir John Cheke."[1] Burnet (Hist. Ref., part ii, Bk. I, p. 197, ed. 1681) says, "thus was the work carried on and finished." There is preserved in the Harleian collection of MSS. (No. 426) in the British Museum, a manuscript of the Reformatio Legum (with the exception of eight sections). Dr. Cardwell (Ref. Leg., Pref. of 1850, pp. viii and ix) infers from the evidence afforded by this MS. that Cranmer and Peter Martyr took the whole responsibility of compiling the Reformatio upon themselves,

> employing Dr. Haddon to see that their sentiments were expressed in proper language. It would appear then that they were engaged in this work during the year 1552, and that our MS. may be considered as the result of their labours during that period.

Dr. Cardwell (p. vi) thus describes it:

> This MS. possesses a singular degree of interest. Having been written out with great care it was submitted to the Archbishop for a last revision, and contains together with various supplements and suggestions of Peter Martyr and Dr. Haddon in their handwriting, the final additions and alterations of Archbishop Cranmer written by himself. It had now reached so great a degree of completeness having had many of its clerical errors corrected and titles supplied for all the separate chapters partly from the pen of the Archbishop and partly from that of Peter Martyr, that after one further examination from the Archbishop to dispose of the observations made by Martyr and Haddon, it might be presented to the King and receive the final ratifications prescribed by the Act of Parliament under which the whole work was undertaken.

I shall return to the consideration of this MS. later, but it is mentioned here only because it affords convincing evidence that Cranmer and Peter Martyr and, in a very minor degree, Haddon, were concerned in the authorship of the Reformatio.[2] There is no similar

[1] Strype (Life of Sir John Cheke, chap. iii, § 2) mentions that Cheke was selected as one of the thirty-two commissioners, and Foxe in his preface to the 1571 ed. of the Reformatio thinks that Cheke lent a hand in its preparation.

[2] As to Peter Martyr, see letter from John ab Ulmis to Bullinger, dated at Oxford, 5th February 1552 (Original Letters, P.S., vol. ii

evidence that anyone else had a hand in it, though it is very likely that their labours were shared by others, *e.g.*, Sir John Cheke (Strype's Life, chap. iii, § 2), and probably other members of the thirty-two, or at least of the eight.

The period of three years allowed by the Act of 3 & 4 Edw. VI, ch. 11, for the compilation of the revised Canon Law expired, it will be remembered, on 4th November 1552. Apparently it was foreseen some months before this date that the Reformatio, however far advanced towards completion, would not, or might not, be ready by the 4th November. Accordingly a Bill extending the time for the execution of the work was brought into and carried through the House of Commons. It was read a first and second time in the House of Lords on 14th April 1552, but went no further (Journal of H. of Lords, vol. i, p. 428). Parliament was dissolved on the 15th April. A new Parliament met on the 1st March 1553. No step was taken in it with regard to the matter in hand, and the King died on the 6th July 1553.

It is clear that whatever the reasons stimulating opposition to the legalization of the Reformatio Legum, it had opponents influential enough to bar its progress. Foxe (preface to 1571 ed.) says that had Edward VI lived a little longer there is no doubt the Reformatio would have been established by Act of Parliament. Apparently Edward VI was anxious that there should be a reformed ecclesiastical law. In October 1552 he inserted in a "Memorial" of things he desired to accomplish, "the abrogating of the old Canon Law and establishment of a New." (Strype's Memls. Cranmer, Bk. II, chap. xxxv, p. 299.) His will was intended to contain a similar clause (Strype's Memls., Bk. II, chap. xxii, p. 430). But others were not anxious to see this particular experiment of a reformed Canon Law adopted. Northumberland, whose influence was para-

p. 447). "Peter Martyr is still in London taking his part in framing ecclesiastical laws."

mount in Edward's last years, is said to have insisted to Cranmer that nothing should be done to give effect to the Reformatio Legum.[1] Strype (Memls. Cranmer, Bk. II, chap. xxvi, p. 271) referring to Cranmer writes:

> He did his part, for he brought the work to perfection. But it wanted the King's ratification which was delayed partly by business and partly by enemies.

One or two letters of this period give us a glimpse of the lack of unanimity which hindered decisive action. Thus Martin Micronius, writing to Bullinger from London on 9th March 1552, says:

> We have great hopes of a reformation both in church and state during this parliament. For there are appointed to the reformation of the church eight godly bishops amongst whom is Hooper; eight doctors in divinity among whom is Master John a Lasco, a man fearless in the cause of godliness, and Master Peter Martyr. The business has turned out well enough hitherto; and if the Bishops of London and Ely [Ridley and Goodrick] would not stand in the way with their worldly policy it would, I think, have made yet further progress. But I hope that their opposition will be ineffectual. (Original Letters, P.S., vol. ii, p. 580.)

Peter Martyr himself, writing at this time (8th March 1552) from Lambeth to Bullinger informs him of the appointment of the thirty-two commissioners, the majority of whom he evidently regards as congenial to his views, and begs the prayers of his friends abroad.

> For it is not only necessary to entreat God that pious and holy laws may be framed but that they may obtain the sanction of parliament or else they will not possess any force or authority whatsoever. (Original Letters, P.S., vol. ii, p. 503.)

Again, Cox (one of the commissioners), writing to Bullinger from Windsor, under date 5th October 1552,

[1] Gairdner's Lollardy and the Reformation in England, vol. iii, p. 363.

laments the disinclination of many to adopt the proposed code of reformed canons. He says:

> . . . but the severe institutions of christian discipline we most utterly abominate. We would be sons and heirs also, but we tremble at the rod. Do pray stir us up and our nobility too by the Spirit which is given to you to a regard for discipline; without which, I grieve to say it, the kingdom will be taken away from us and given to a nation bringing forth the fruit thereof. (Original Letters, P.S., vol. i, p. 123.)

Todd, the biographer of Cranmer (Life, vol. ii, p. 325), writes:

> Whether by the death of Henry, or some other cause, the plan in his time had been rendered abortive, is uncertain. That by the death of Edward it now was, is the frequent assertion of historical writers. Some, however, have thought (Hallam's Const. Hist., 2nd ed., vol. i, p. 139) that the severity of the code would never have been endured in this country, and that this is the true reason why it was laid aside. Others (Ridley, Life, p. 352) that in that age of licentiousness, which ill could brook restraint, some art was employed to prevent the confirmation of it.

Pollard (Life of Cranmer, p. 281) writes:

> . . . the Bill introduced in 1552 to renew the commission failed to become law, largely owing to Northumberland's opposition.

Stubbs (Lectures on Modern and Mediaeval History, p. 322) writes:

> . . . practically the work was done by Peter Martyr the Oxford Professor of Divinity, under Cranmer's eye and the result was the compilation known as the Reformatio Legum; a curious congeries of old and new material which really pleased no party; showing too much respect for antiquity and divine ordinance to please the Puritan, and too little to satisfy the men who had guided the Reformation under Henry VIII and those who were to do so under Elizabeth.

Queen Mary's reign lasted from the 6th July 1553 till the 17th November 1558. It was of course a period of reaction, and not only was nothing done to advance

the Reformatio Legum, but the Act 25 Hen. VIII, ch. 19, under which the scheme started, was repealed by 1 & 2 Ph. & M., ch. 8. It was revived by 1 Eliz., ch. 1. Early in Elizabeth's reign a "Bill for making Ecclesiastical Laws by 32 persons" was introduced into and carried through the House of Commons. It was brought up to the House of Lords on the 20th March 1559, and was read a first time there on the 22nd March, but did not proceed further (Journal of H. of Lords, vol. i, pp. 566, 568). Nothing more seems to have been heard of the Reformatio Legum until 1571. In that year (when the Thirty-nine Articles received statutory sanction) Foxe, with the permission of Archbishop Parker, brought out the first printed edition of the Reformatio. It was published by John Day. Foxe used the manuscript already mentioned, and also another (now lost) containing the whole code revised by Archbishop Parker. Dr. Cardwell (Reformatio, Pref. of 1850, xiii) writes:

> the edition of 1571 is the authentic form into which the ecclesiastical laws were brought on their last revision at the time of the Reformation, and has naturally therefore been adopted as the standard from which the present reprint should be taken. But this must be understood with great limitation. Beyond the common press errors of evil punctuation and the omission or substitution of letters or syllables which though extremely numerous are for the most part easily corrected, the printed book contains greater mistakes sufficient to limit the use and impair the authority of the whole record. So great is the number & variety of them that they illustrate all the causes to which such mistakes have at any time been attributed and even baffle in some instances any attempt at explaining the origin of them. Besides the alterations which appear to have been made advisedly and may be ascribed to Archbishop Parker there are deviations from the older MS. attributable to either the carelessness, the ignorance or the wilfulness of the transcriber and then there still remain the many varieties of error connected with the work of printing.

Foxe's print was almost certainly connected with some scheme, the particulars of which we lack, for the

revival of the project of an authorized reformed code of Canon Law. All that appears to be known about the matter is thus stated by Dr. Cardwell (Reformatio, Pref. of 1850, p. xi):

> It does not indeed appear to have been adopted by the Queen and her government but it was published, as Foxe intimates, for the purpose of being used in parliament, it was called for by M^r^ Strickland and produced by M^r^ Norton eminent debaters of that period during a discussion on religious subjects in the House of Commons, was referred, together with other matters of a similar nature, to a Committee of that House and was ordered to be translated into English. But it made no progress. The Queen, averse to all interference of the Commons in ecclesiastical matters had conceived an especial displeasure against the individuals by whom the measure was recommended; and these individuals too might find on an examination of the book itself sufficient reasons for delaying the consideration of it to a future period. There is no notice of it in the Journals of either House; and so little does the Queen appear either to have approved of the book, or to have been in favour of the general measure, that no attempt apparently was made during her reign to revive the Act of 1549.

This last statement is not accurate. As we have seen, a Bill was introduced in 1559 but did not pass the House of Lords. Dr. Cardwell gives as his authorities D'Ewes' Journal, p. 157, and Penri's tract, "Reformation no Enemy," etc., 1590. (*See also* Fuller's Church History, vol. iv, p. 108.)

Speaking of the 1571 edition, Dr. Cardwell says (Pref. of 1850, xii, *m.*):

> The book appears to have had little circulation. M^r^ Strickland had not seen it when he called for the production of it and Penri in the treatise noticed above, which he published in the year 1590 advertised for a copy of it in the hope that it would promote his views of ultra-reformation. And yet these two persons were among the most prominent of the controversialists in politics and religion at that period.

No more seems to have been heard of the Reformatio Legum until 1640 (the year of Archbishop Laud's abortive canons). In that year a reprint of the 1571

edition was produced by Daniel Frere of Little Britain in the City of London.[1] In 1641 another reprint of the 1571 edition was published by the Stationers' Company, London. With regard to these Dr. Cardwell writes (Pref. of 1850, p. xiv):

> In both indeed and more especially in the latter of them, the punctuation is much improved, many of the common errors of the press have been corrected, and some of the greater errors have been omitted and their places supplied by conjectural emendations in some instances successful, in others the reverse. But it is evident from the many errors left unnoticed that no original MS. was employed for either of the two editions.

The only other edition of the Reformatio Legum is that published in 1850 by Dr. Cardwell. It is an extremely accurate and careful piece of work, and is the only edition which can be relied on by a student for ordinary use. Its method is thus explained by Dr. Cardwell (Pref. of 1850, p. xiv):

> the edition of 1571 was taken as the standard and all such readings as differed from the MS. of Archbishop Cranmer but might have been made advisedly and under the direction of Archbishop Parker are retained, the readings of the older MS. in those cases being recorded in the Appendix. But wherever the readings of the standard edition differ from that MS. and cannot have been corrections proceeding from Archbishop Parker the readings of the MS. are placed in the text and those of the standard edition at the foot of the page. So that the text of this reprint is the same with the edition of 1571 excepting where errors of copy or of press have been corrected from the older MS.; and those errors themselves are recorded at the foot of the page except where they were of so palpable a nature as to be undeserving of being noticed. The appendix contains such readings of Archbishop Cranmer's MS. as appear to have been purposely altered in the MS. of Archbishop Parker, together with notices of the many and important changes made by Archbishop Cranmer and Peter Martyr in the course of their revision.

[1] Apparently more than one publisher was concerned with this edition. Some copies bear the name "Laurentii Sadler" at the sign "Aurei Leonis" in Little Britain.

II

THE REFORMATIO LEGUM AS TO DIVORCE

ALTHOUGH I have so far dealt with the history of the development of the Reformatio Legum as a whole, it is the particular section of it entitled "De Adulteriis et Divortiis" which has special relevance to the law and practice of the Church of England, in the sixteenth century, as to Divorce. This section opens with a statement that adultery ought not to be passed over by the Ecclesiastical Judges without the most condign punishment. It then proceeds to enact that clergymen convicted of adultery are to forfeit all their goods and property and to be perpetually banished or imprisoned for life; that laymen so convicted are to forfeit half their goods and to be perpetually banished or imprisoned for life; that wives so convicted are to be deprived of their dowry and all right in their husbands' property and to be similarly punished; that a husband or wife who deserts the other spouse and either refuses to return or cannot be found, but subsequently comes forward, is to be imprisoned for life, and a husband who without deserting his wife is absent for a long time and when he returns cannot satisfactorily explain his movements, is to be imprisoned for life; that a husband or wife who shows deadly hostility towards or attempts to murder the other spouse, and also a husband who is incorrigibly violent and harsh towards his wife, is to be perpetually banished or imprisoned for life; that incest is to be punished by imprisonment for life and that fornication is to be punished by penance and (if necessary) excommunication and by a penalty of £10 (or as much as can be conveniently spared) to be placed in the poor box. It is further enacted that the innocent party, where there has been a conviction for adultery, may after an interval of a year or six months (to give opportunity for reconciliation) remarry; but the guilty

party may not remarry; that in cases of desertion or protracted absence without tidings, the deserted party may, by sentence of the judge and after an interval decreed by him, be allowed to remarry, but subject to the condition that if the long absent husband return and satisfactorily explain his disappearance, the wife must leave her second husband and go back to the first; that one spouse who is the victim of the deadly hostility of the other, or a wife who suffers from the incorrigible harshness of her husband may be allowed to remarry; but that trifling disagreements, incurable disease, adultery of one spouse at the instigation of the other, and adultery of both spouses are not grounds for allowing remarriage. Finally it is enacted that separation *a mensa et thoro* is to be abolished.

Questions have been raised (1) as to how far, if at all, the Reformatio Legum furnishes a true reflection of the dominant opinion of the English Church with regard to Divorce at the date of its compilation and (2) as to how far, if at all, the Reformatio Legum, though not formally authorized, was in fact acted on in matrimonial causes by the English Ecclesiastical Courts during the latter half of the sixteenth century.

III

OPINIONS OF SIXTEENTH CENTURY DIVINES AS TO DIVORCE

On the question of Church opinion it is material to ask—Who were the real authors of the remarkable proposals I have summarized? From the nature of the case these proposals were new. The old Canon Law did not recognize divorce *a vinculo* and therefore could not furnish a basis for this part of the Reformatio Legum. Attention has already been drawn to the extreme opinions of the section of the Reformers who were undoubtedly chiefly concerned with its actual compilation.

It is easy to see how naturally they would be led on by their emphatic repudiation of the sacramental view of marriage as a divinely appointed symbol of the relation between Christ and His Church, and therefore indissoluble, to disown this indissolubility and then, under the pressure of practical considerations, to allow one exception after another to the old rule of theoretic rigidity. Another set of changes made at this time as part of the revolt from Rome, abolished a great many of the old rules as to forbidden degrees of consanguinity and affinity. These elaborate and highly artificial rules produced a system under which marriages theoretically indissoluble, if originally valid, could practically be got rid of by being declared null *ab initio* on account of the impediment of relationship. This relationship might consist in some remote or fanciful connection between the parties or their godparents, unknown to either of them until the desire to find a way out of an irksome union suggested minute search into pedigrees for such a relationship—a search which somehow seems to have been generally successful. The disappearance of this machinery for what was virtually divorce, left the difficulty, to which its development had been due, demanding solution in some other way, and must have furnished another powerful incentive to the men of that age to adopt the direct course of declaring divorce *a vinculo* possible under certain circumstances. It is not at all surprising that the Reformers should seize on the doubtful and always disputed case of adultery as a ground for complete divorce and should range themselves on the side of those who considered that our Lord permitted remarriage, at any rate to the innocent party. Speaking generally, the English Reformers seem to have stopped at this point (*see* p. 44). But as we have seen the scheme of the Reformatio Legum went much further. May it not be that the real inspiration of this portion of the code came from the foreign Protestants whose influence in Edward VI's reign in the changes then made or proposed, is notorious and has already been noticed? The

direct part taken by Peter Martyr (1500-62) in the preparation of the Reformatio Legum, and the inclusion of John a Lasco in the body of thirty-two commissioners, indicate the great influence of the foreign Protestants. It should be added, however, that Peter Martyr's own views on Divorce seem to have been more conservative than those of some other Reformers. He deals fully with the subject in his "Loci Communes—De Divortiis et Repudiis" (cap. 10, p. 302, etc., ed. Heidelberg, 1603; 1st ed., 1560): and he appears to have delivered lectures on Divorce, probably in England, in or prior to 1550. (*See* Original Letters, P.S., vol. ii, p. 404, John ab Ulmis to Henry Bullinger.) Martyr's general position is that Christ's words allowed Divorce for no cause except adultery, and that the Church must leave to the State any extension of the grounds of Divorce. But Martin Bucer's work De Regno Christi, written expressly for the guidance of Edward VI and presented to him about New-year's tide 1551 (*see* Strype's Memorials, Book II, chap. ix, p. 316), may well have been the actual source of the section in the Reformatio as to Divorce. The longest and most carefully written division of the work, De Regno Christi (*see* the 1557 edition, Basle, and The Judgment of Martin Bucer concerning Divorce . . . now Englisht by John Milton, 1644), is a treatise in many chapters, warmly defending Divorce and remarriage, *e.g.*, in cases of desertion (chaps. xxxv and xli) and condemning divorce merely *a mensa et thoro* as contrary to God's ordinance. Bucer seems to have shocked some at least of his contemporaries by the laxity of his notions on Divorce. John Burcher writing to Henry Bullinger, 8th June 1550, from Strasburg (Original Letters, P.S., vol. ii, p. 665) says: "Bucer is more than licentious on the subject of marriage. I heard him once disputing at table upon this question, when he asserted that a divorce should be allowed for any reason however trifling; . . ."

It is important when we are considering to what extent the Reformatio Legum reflected the opinions

and aims of the Church of England in Edward VI's reign, to give due weight to the fact that neither Parliament nor Convocation ever accepted it or expressed approval of its provisions.[1] We do not even certainly know that any of the various commissions appointed to review the Canon Law in fact approved the Reformatio Legum as it has come down to us. It is not improbable that the more sensible men of all parties, both clergymen and statesmen, perceived, as was surely the case, that a code containing laws such as I have described was hopelessly impracticable in England then, and indeed always. The practical impossibility of the plan, while it agrees well with its being the work of foreign theologians, makes it difficult to believe that the scheme was ever really pushed by the great mass of English Churchmen. Even Archbishop Cranmer, as we have seen, opposed the Bill providing for the reappointment of the commission to revise the Canon Law in Edward VI's reign. Leaving Edward's time and passing on to 1571, Archbishop Parker's attitude towards the Reformatio Legum is very doubtful and obscure. He undoubtedly made some alterations in Cranmer's draft, and it will be remembered that he was himself one of the thirty-two commissioners of 12th February 1552. He must have allowed Foxe facilities in the preparation of the first printed edition of 1571, but with what object it would be rash to speculate. There is nothing, so far as I know, in his writings to show that he ever contemplated legislation to give effect to the Reformatio

[1] Bills were brought into Parliament in 1549, and 1552 dealing with Divorce, but they were abortive. In Jan. 1549 there was "the Bill for Adultery" in the Commons (Journal H. C., vol. i, p. 6). In March 1549 there was "the Bill for divorce *vinculo matrimonii* in causes of adultery" in the Commons (Journal H. C., vol. i, p. 9). In 1551-2 there was the Bill "that no man shall put away his wife and marry again not being lawfully divorced by competent Judges." This was apparently directed against the view put forward in the Parr case, that adultery *ipso facto* dissolved a marriage. This Bill passed the Lords and made some progress in the Commons (Journal H. L., vol. i, pp. 409, 413; Journal H. C., vol. i, p. 23).

Legum.[1] The canons of the same year, 1571 (*see* these canons edited by W. E. Collins, late Bishop of Gibraltar, for the Church Hist. Soc.), which it will be remembered were passed by the Convocations but failed to obtain the Queen's affirmation, deal with some of the same subjects as the Reformatio (*e.g.*, *De Concionatoribus*) and yet form a perfectly distinct and separate code. It is inconceivable that Convocation should have busied itself as it did with the canons of 1571, if at the same time there had been any real desire to obtain the Queen's sanction to the Reformatio Legum. Archbishop Parker in his Visitation Articles (1563, 1569, 1575) inquires, with a view to subsequent proceedings, whether there be "any that being divorced or separated aside have married again" (*see* p. 53).

Direct evidence of the views of the leading Churchmen of Edward VI's and Elizabeth's reigns is not so abundant as might have been expected. It is clear, as has been already stated, that there was a great unsettlement of the old beliefs with regard to marriage generally and particularly as to its absolute indissolubility. The changes of opinion of Archbishop Cranmer have been already noticed and will again be apparent when the Northampton case is dealt with. So late as December 1540 (*i.e.*, six years after the first of the series of Acts which led to the preparation of the Reformatio Legum) the archbishop was strongly opposed to the lax views of divorce followed by remarriage which seemed to

[1] In a remarkable paper entitled General Notes of matters to be moved by the clergy in the next Parliament and Synod (*i.e.*, 1562), which has some marginal notes in Archbishop Parker's hand, the following occurs: "That adulterers and fornicators may be punished by strait imprisonment and open shame if the offender be vile and stubborn, &c., as carting by the civil magistrate, &c. *Some think banishment and perpetual prison to be meet for adulterers.* When they be reconciled the form of reconciliation appointed legibus Ecclesiasticis Edwardi 6ti to be used without respect of persons." (Strype's Annals, Hist: chap. xxvii, pp. 317-325.) The reference to the Reformatio Legum is obvious. See form of Reconciliation in cap. 16 (Cardwell's ed., p. 177). The words in italics do not indicate the writer's personal agreement with the provisions of the Reformatio as to adultery, etc.

be prevalent amongst Protestants on the Continent. Cranmer (1489-1556) writing to Osiander (Preacher of Nuremburg) 27th December 1540 (Remains, etc., P.S., pp. 404-8) says:

Nevertheless some things are frequently occurring which I can neither deny, nor can I admit them without shame; nor lastly am I able to imagine any sufficient reason by which they may be shown to have been done consistently with honour or piety. For, not to say a word at the present time on usury, which it is clear is approved by you or at all events some of you, or concerning the fact that you allow the sons of your nobles to have concubines (with a view doubtless to prevent the breaking up of inheritances through lawful marriages) and yet you are so strongly opposed to priests having concubines; leaving this out of the question, what can possibly be alleged in your excuse when you allow a man after a divorce, while both man and woman are living, to contract a fresh marriage and what is still worse even without a divorce you allow one man to have several wives? And this you yourself, if I remember right, in some of your letters expressly declared to have been done; adding thereto that Philip [Melancthon] himself was present at a second marriage, acting as I believe a bridesman and taking it under his countenance.[1]

These two things are expressly and undeniably contrary both to the nature of marriage, which does not make two, but one flesh, as well as also to the Scriptures, as will be seen from Matthew xix, Mark x, Luke xvi, Romans vii, 1 Cor. vii, from which passages it is clear that according to the institution of the Apostles and therefore of Christ himself, one person ought to be joined in matrimony with one person, and that persons so joined together cannot again contract marriage until the death of one of the parties shall have happened. But if your reply is that we must understand it in such a sense as to except the case of fornication, I ask whether adultery on the part of the wife was the reason why Philip allowed the husband to marry a second wife in addition to the first? You know better than I. But even if it were so, we shall then object that from the origin of the Church up to this hour (and according to examples in it interpretations of the Scriptures must be con-

[1] This probably refers to the marriage of Philip, Landgrave of Hesse, with Margaret de Sala (his first wife being alive) which Luther, Bucer, and Melancthon defended.

formed and by them confirmed) at no time, as far as we know, has this been so received. . . .

William Tyndale (the translator of the New Testament, died 1536), in his exposition of St. Matt. v, vi, vii (Expositions, etc., P.S., pp. 51, 52), writes:

. . . But Christ calleth back again and interpreteth the law after the first ordinance and cutteth off all causes of divorcement save fornication of the wife's party, when she breaketh her matrimony; in which case Moses' law pronounceth her dead and so do the laws of many other countries: which laws, where they be used, there is a man free without all question. Now where they be let live, there the man (if he see sign of repentance and amendment) may forgive for once. If he may not find in his heart (as Joseph as holy as he was, could not find in his heart to take Christ's mother to him, when he spied her with child) he is free no doubt to take another, while the law interpreteth her dead: for her sin ought of no right to bind him. What shall the woman do if she repent and be so tempted in her flesh that she cannot live chaste? Verily I can show you nothing out of the scripture. . . .

Where the officers be negligent and the woman not able to put herself to penance, if she went where she is not known and there marry, God is the God of mercy. If any man in the same place where she trespasseth pitied her and married her, I could suffer it; were it not that the liberty would be the next way to provoke all other that were once weary of their husbands to commit adultery, for to be divorced from them, that they might marry other which they loved better.

But (pp. 54, 55) Tyndale, after a digression, continues:

But to our purpose: what if the man run from his wife and leave her desolate? Verily the rulers ought to make a law if any do so and come not again by a certain day, as within the space of a year or so, that then he be banished the country; and if he come again, to come on his head, and let the wife be free to marry where she will. . . . In like manner if the woman depart causeless and will not be reconciled, though she commit none adultery, the man ought of right to be free to marry again. And in all other causes if they separate themselves of impatience that the one cannot suffer the other's infirmities, they must remain unmarried.

Bishop Hooper (1495-1554), Early Writings, P.S., pp. 378, 379, writes:

There is another kind of adultery forbidden in this precept, which Christ speaketh of, Matt. v and xix, which is unlawful divorcement of matrimony, where as the man putteth away the woman, or the woman the man for unlawful causes. The same authority hath the woman to put away the man that the man hath to put away the woman. Mark x, Christ saith there is no lawful cause to dissolve marriage, but adultery. . . . Wheresoever this fault happen and can be proved by certain signs and lawful testimonies, the persons may by the authority of God's word and ministry of the magistrates, be separated so one from the other, that it shall be lawful for the man to marry another wife and the wife to marry another husband as Christ saith, Matt. v and xix.

Hooper's view of the equality of the sexes involved him in controversy with his "opponents," who, while thinking the innocent husband ought to be allowed to remarry, were not in favour of the innocent wife having the same liberty. Hooper consulted Bullinger. (*See* his letter, 31st May 1549, in Original Letters, P.S., vol. i, p. 64.)

Thomas Becon (a Prebendary of Canterbury, died 1567) (Works, P.S., vol. ii, p. 647, Homily against Whoredom) writes:

. . . for whereas the Jews used of a long sufferance by custom to put away their wives at their pleasure for every cause Christ correcting that evil custom did teach that "if any man put away his wife and marrieth another for any cause except only for adultery (which then was death by the law) he was an adulterer and forced also his wife so divorced to commit adultery. . . ."

Again (vol. iii, p. 532, The Acts of Christ and of Antichrist—Of their Doctrine) he writes:

Christ saith "whosoever putteth away his wife (except it be for fornication) and marrieth another, breaketh wedlock"; giving here liberty to the guiltless and innocent man having an harlot to his wife . . . not only to be divorced from that harlot sometime his wife, but also to marry again and take another woman

to his wife in the fear of God. . . . Antichrist in his law saith: If a man have an whore to his wife it shall be lawful for him to be divorced from her both from bed and board but he may by no means marry again, live as he may.

Richard Hooker (1553-1600), Ecc. Polity, Book V, chap. lxxiii, section 3, writes:

Man and woman being therefore to join themselves for such a purpose, they were of necessity to be linked with some strait and insoluble knot. (*See also* section 8.)

Bishop Lancelot Andrewes (1565-1626), Minor Works, Lib. A.C.T., p. 106, wrote: "A discourse against second marriage after sentence of divorce with a former match, the party then living." Extracts from this paper are given elsewhere in this work. It was probably written about 1601.

John Dove (1561-1618), Doctor of Divinity, "Of Divorcement—a sermon preached at Paul's Cross the 10 of May 1601," London, printed by T. C., 1601. He teaches the absolute indissolubility of marriage, taking St. Matt. xix, 9, as his text.

Edmund Bunny (Bachelor of Divinity), in 1595, wrote: "Of Divorce for adultery and marrying again: that there is no sufficient warrant so to do." An edition was published at Oxford in 1610. Its title sufficiently summarizes its contents. The writer deals with his subject very diffusely and with no novelty of argument or point of view.

Dr. Andrew Willett (1562-1621), Chaplain in Ordinary and tutor to Prince Henry, eldest son of James I, wrote Synopsis Papismi (3rd ed. 1600). One section is called "The 15th general controversy." In this section a chapter is headed "The third Question: Of the cause of Divorce in marriage, and whether it be lawful to marry after Divorce." This chapter is divided into two parts, viz.: "The first part: whether there may be more causes of Divorce than Fornication only," and "The second part: whether it be lawful to marry

after Divorcement for adultery." Under the first part (Dr. Cummings's edition, London, 1852, vol. vi, pp. 249-56):

"What God hath joined together let no man put asunder." Matt. xix, 6. But the Papists in devising so many separations from bed and board do put asunder those whom God hath coupled: for where the duties of marriage are broken off then marriage itself is also dissolved: if the man and wife be no longer bound to render the carnal debt one to another and other services of love, the bond of marriage itself is loosed between them: this then is but a frivolous distinction, that there are two separations of marriage: "*Quoad thorum, quoad vinculum.*" One from the bed, another from the bond of marriage: they then making so many separations from the one, do also dissolve the other: and so man divideth where God hath coupled: *argumentum Kemnitii.*

Bellarmine answereth, that the bond of marriage is one thing, the debt or duty of marriage another: for otherwise, when the married parties are absent by some distance of place, and so the debt not paid, the bond also should presently be dissolved and they cease to be man and wife: (cap. 14, resp. ad object. 5 [tom. 3, p. 1755]).

First Bellarmine granteth, that these words, "whom God hath coupled," etc., are understood of the bond of marriage, not of the carnal debt, communion of bed and board: "ex concessis," I reason thus: that whereby they are coupled and made one flesh is the bond of marriage, but the carnal debt maketh them one flesh: "They twain shall be one flesh," Matt. xiv, 5, therefore the carnal debt is the very bond of marriage:

. . . . . .

. . . in marriage the *debitum*, debt, and *vinculum*, bond, are all one; and that "*relaxatio debiti*," the releasing of the debt, is "*solutio vinculi*" the dissolving of the bond: . . .

. . . . . .

. . . when the parties are absent upon necessary occasion, or by consent, here is neither refusal nor acquittal of the carnal debt as there is in forced separations; but in affection and desire they remain still subject one to the other; therefore the reason is not alike: so then I conclude that they separating where God alloweth no separation do contrary to the Scripture, put asunder where God hath joined together.

. . . we acknowledge no other cause of lawful divorce in marriage but that only which is prescribed in the Gospel, viz., for adultery or fornication, Matt. v, 32, and xix, 9. There is

notwithstanding another cause whereby the marriage knot may be dissolved though not for fornication: as when one of the parties doth wilfully renounce leave and forsake the other upon no just cause, but either of lightness or for divers religion, as when an infidel forsaketh a Christian; a Papist, a Protestant; a heretic, a true professor; or upon any other unlawful or unjust cause: for the Apostle saith plainly, "A brother or sister is not in subjection in such things." 1 Cor. vii, 15, that is, freed from the yoke or bond of marriage.

. . . . . .

. . . we must know what kind of desertion it is, that causeth a dissolution of marriage and in what manner. First it must be *malitiosa desertio*, a malicious departure without any just cause. . . .

. . . . . .

. . . Neither is St. Paul contrary to our Saviour Christ, who alloweth no divorce but only for fornication: for that is a divers case from this, whereof St. Paul treateth; and there is great difference between lawful divorce and unlawful and wilful desertion: for there the innocent party first claimeth the privilege of separation; here the guilty party first separateth himself: there divorce is sued and required: here the innocent party seeketh no divorce, but seeketh all means of reconciliation; so that properly the setting free of the innocent party in this case cannot be called a divorce. Christ therefore speaketh of lawful divorce, not of every dissolution of marriage: for then mention should have been made in that place of natural death and departure, which is confessed by all to be a dissolution and breaking off of marriage.

Thus have I shewed mine opinion with Beza and others concerning this point: herein further as in all the rest referring myself to the determination of our Church and the judgment of our learned brethren. . . .

. . . . . .

The Papists themselves allow the party forsaken to marry again; but the difference between us is this: first they affirm that where the one party is an infidel the marriage is dissolved whether the unbelieving party will remain or not, contrary to the Apostle, 1 Cor. vii, 13, "If he be content to dwell with her, let her not forsake him." Secondly, they hold this to be desertion only where the one party is an infidel; and in this case of infidelity only matrimony upon desertion to be dissolved: whereas if there be a wilful desertion of the one party, the case is all one, whether he be a professed infidel or not: for he that

is careless of his wife and family, by St. Paul's rule "is worse than an infidel." 1 Tim. v. 8.

Under the second part (pp. 261, 262) Dr. Willett writes:

> For no other cause in the world but only for fornication may there be either a final separation or clean dissolution of marriage by way of divorce. But for that cause our Saviour hath granted liberty both to dissolve matrimony and to marry again.

The author discusses St. Matt. v, 32; xix, 9, and continues:

> This liberty granted by our Saviour Christ by no human law can be restrained or cut off.
>
> This place troubleth our adversaries very sore, and therefore they have found out many starting holes, but all to small purpose.

John Howson (1557?-1632), Bishop of Oxford, afterwards of Durham: "Uxore dimissâ propter fornicationem aliam non licet superinducere. Tertia Thesis Johannis Howsoni Inceptoris in Sacrâ Theologiâ proposita et disputata in Vesperiis. Oxonii, 1602."

As the title implies, the author argues strongly against divorce, with power to remarry, being allowed in any case or for any cause.[1]

John Rainolds (1549-1607), President of Corpus Christi College, Oxford, and Dean of Lincoln. "A Defence of the Judgment of the Reformed Churches that a man may lawfully not only put away his wife for her adultery, but also marry another. Wherein both Robert Bellarmin, the Jesuit's Latin Treatise, and an English pamphlet of a nameless author maintaining the contrary, are confuted by John Raynolds." Printed anno 1609 (after the author's death), page 2:

> But since in our days the light of good learning both for Arts and tongues hath shined more brightly by God's most gracious

[1] I am indebted to Mr. J. E. G. de Montmorency of Lincoln's Inn, Assistant Secretary to the R. C. on Divorce and Matrimonial Causes, for a reference to this book.

goodness than in the former ages and the Holy Scriptures by the help thereof have been the better understood: the Pastors and Doctors of the reformed Churches have perceived and shewed that if a man's wife defile herself with fornication he may not only put her away by Christ's doctrine, but also marry another. Wherein that they teach agreeably to the truth and not erroneously as Jesuits and Papists do falsely and unjustly charge them, I will make manifest and prove (through God's assistance) by express words of Christ, the truth itself.

Page 94 (the end of the book):

And thus having proved that neither light of reason, nor consent of Fathers nor authority of scripture disproveth our assertion I conclude that point demonstrated at first by the word of truth, the doctrine of Christ, that a man having put away his wife for her adultery may lawfully marry another.

Dr. W. Fulke (born before 1538, died 1589, Master of Pembroke Coll., Camb.). Text of the N.T. Rheims version contrasted with English version, with commentary. Written in Queen Elizabeth's reign (ed. 1617). Under St. Matt. v, 33, Fulke says:

S^t^ Mark and S^t^ Luke understand the exception which they do not express for they all report one doctrine of our Saviour Christ and the exception declareth that not only divorcement but also marriage after divorcement is free as it was in the law where fornication is the cause of divorcement. . . . The Pope's Canon Law restraineth the liberty of marriage and divorcing because he may take more money for bulls of licence and dispensation to marry.

In a further passage on the same page Fulke indicated that he only recognizes divorce on the ground of adultery.

Bishop Godfrey Goodman (1583-1656) (The Fall of Man, ed. 1616, pp. 260, 261), writes:

. . . but I know not what ill spirit hath set them at enmity, whom God hath coupled together: sometimes indeed the stream of the husband's love, being carried another way, is apt to cast any aspersion upon his wife's honesty; and then he begins to practise with heretics, and to commend the law of liberty, that

after a divorce it should be lawful to marry again, and again. Here you shall see large expositions written in defence thereof, and the opinions of certain Divines, Ministers, Pastors, Superintendents of the separated congregations, or the new Churches from beyond the seas, (thus they would seem to have a Catholic consent) together with such bitter invectives against all superstitious fasts, calling all chastisements of the flesh, sins against the body.

Bishop Francis White (1564?-1638) (The Orthodox Faith and Way, ed. 1617, pp. 353, 354), answering a Roman Catholic controversialist, Thos. Worthington, who accused Luther of saying, "If the wife will not, or cannot, let the maid come." White writes:

This speech being divorced from the occasion whereupon it was uttered, and from the other parts of the discourse, seemeth gross: But the whole contexture being laid together affordeth no more but this: That if a disobedient wife refuse to live with her husband according to the Apostle's rule, 1 Cor. vii, 3. And by her obstinacy give occasion of adultery, the husband may threaten her with divorce, and cutting her off from his flesh. Eccles. xxv, 26. And terrify her with the example of Queen Vashti, who being rebellious was put away, and Hester a maid was chosen in her place, Hest., i, 12. And if upon admonition of her husband and others, she still continued obstinate, Luther esteemed this to be a kind of desertion, 1 Cor. vii, 15. And judged it a lawful cause of divorce. Now although this opinion of his concerning divorce, be not so justifiable: yet the Papists do shamefully abuse him, in detorting his words to a giving liberty to adultery and dishonesty, which he never intended.

Henry Hammond (1605-60, Canon of Christ Church) (Practical Catechism, Lib. Angl: Cath: p. 139) writes:

Scholar: What doth Christ now in his new law in this matter of divorce?

Catechist: He repealeth that whole commandment [the Mosaic law] and imposeth a stricter yoke on his disciples. . . . And therefore now He clearly affirms of all such divorces that whosoever thus puts away his wife as the Jews frequently did causeth her to commit adultery and he that marrieth her committeth adultery; and if after such divorcement he himself marry again he committeth adultery and is in that respect sadly

liable. That is, in brief that the bond of wedlock now under Christ is so indissoluble that it is not the husband's dislikes which can excuse him for putting away his wife, nor his giving her a bill of divorce which can make it lawful for her to marry any other, nor for any other to marry her who is for all this bill still indissolubly another man's wife.

Scholar: But what is no kind of divorce now lawful under Christ?

Catechist: Yes clearly, that which is here named, in case of fornication . . . this liberty being peculiar to the husband against the wife and not common to the wife against her husband; . . .

Scholar: Is there no other cause of divorce now pleadable or justifiable among Christians but that in case of fornication?

Catechist: I cannot define any because Christ hath named no other. . . .

Bishop Jeremy Taylor (1613-67) (Ductor Dubitantium, ed. 1660, tome i, p. 191):

That since an adulterer is made one flesh with the harlot with whom he mingles impure embraces, it follows that he hath dissolved the union which he had with his wife.

Bishop Joseph Hall (1574-1656) (Works, ed. 1837, vol. vii, pp. 473, 474, Cases of Conscience) writes:

. . . When a just divorce intervenes these bonds are chopped in pieces; and no more than if they had never been. And if all relations cease on death as they do in whatsoever kind surely divorce being as it is no other than a legal death, doth utterly cut off as the Hebrew term imports all former obligations and respects betwixt the parties so finally separated.

The adulterous wife therefore duly divorced being thus dead in law as to her husband, the husband stands now as free as if he had never married: so as I know not why the apostle should not as well speak to him as to any other when he saith: Nevertheless to avoid fornication let every man have his own wife. 1 Cor. vii, 2. Neither is it otherwise in the case of a chaste wife after her separation from an adulterous husband. Mark x, 12. In these rights God makes no difference of sexes: both may lawfully claim the same immunities. . . . Shortly then I doubt not but I may, notwithstanding great authorities to the contrary, safely resolve that in the case of Divorce it is lawful for the innocent to marry. But for that I find the Church of England hitherto somewhat tender on the point (Canon 107) and

this practice, where it rarely falls, generally held though not sinful yet of ill report and obnoxious to various censures. . . .

Bishop John Prideaux (1578-1650) (Fasciculus Controversiarum Theologicarum, ed. 1649, p. 299), under the heading, "An matrimonium legitimum sit dissolubile quoad vinculum," the writer deals with the matter in the form of question and answer and arrives at the conclusion that marriage is indissoluble. For example, at p. 301 he writes:

Objectio: In voluntariâ et obstinatâ desertione Frater vel Soror non est subjectus (1 Cor. vii, 15) ergo vinculum solvitur.
Solutium: Non est subjectus ut discedentem revocet aut sequatur sed inde non absolvitur a vinculo matrimoniali ut vivente conjuge qui deseruit ad alias transeat nuptias ut fecit Galeatius Caracciolus.

Bishop John Cosin (1594-1672) (Works, Lib. Angl: Cath: vol. iv, pp. 489-502) (Bishop Cozen's argument proving that adultery works a dissolution of the marriage: being the substance of several of Bishop Cozen's speeches in the House of Lords upon the debate of the Lord Roos's case) [Bill for dissolving the marriage of Lord Roos, on account of adultery, and to give him leave to marry again. 1670]. The argument is said to be "taken from original papers writ in the Bishop's own hand." The purpose of the argument is thus stated:

The question is indefinitely to be spoken of, whether a man being divorced from his wife, who hath committed adultery, and is convicted of it, may marry himself to another wife or no, during the life of her which is divorced.

Cosin considers, (1) as to the argument that

the separation from bed and board doth not dissolve the bond of marriage . . . . . .
that this is a distinction without a difference newly invented by the canonists and schoolmen and never heard of either in the Old or New Testament nor in the times of the ancient Fathers who accounted the separation from bed and board to be the dissolution of the bond itself;

and (2)

that first institution of marriage, that they may be one flesh is by adultery dissolved when the adulteress makes herself one flesh with another man and thereby dissolves the first bond of marriage. . . .

As to the supposed inconveniences that will follow upon marrying again:

1. More inconveniences will follow if they be forbidden to marry again.

2. The father would be in an uncertainty of the children if he should retain the adulteress.

3. There would be danger of poisoning or killing one another if no second marriage were allowed.

4. Where the parties should consent to new marriages for their own lusts, the magistrates have power to overrule such practices.

5. If they be kept together by divorce from marrying it would occasion the innocent party to sin.

Herbert Thorndike (1598-1672, Canon of Westminster (Theological Works, Lib. Angl: Cath: vol. iv, Of the Laws of the Church), at page 304, writes:

. . . it is not possible to show that ever there was any opinion rule or practice received in the Church, that it is lawful to divorce but in case of adultery. I do truly conceive that there was anciently a difference of opinion and practice in the Church whether it be lawful to marry again upon putting away a wife for adultery; or whether the bond of marriage remain undissoluble, when the parties are separated from bed and board for adultery. But this difference argues consent in the rest; that is that excepting the case of adultery, there is no divorce to be among Christians.

Again at p. 307 he writes:

Some texts are alleged to prove the bond of marriage undissoluble which to me I confess do not seem to create any manner of consequence.

He then discusses Rom. vii, 2, 3; 1 Cor. vii, 39; Eph. v, 28-32; St. Matt. v, 31, 32; xix, 3-9; St. Mark x, 11, 12; 1 Cor. vii, 1-5, 10, 11; St. Luke xvi, 18. At p. 309 he writes:

Be the marriage of Christians then a sacrament, as much as any man would have it to be; be it a commemoration (if

Adam's was a prediction) of the incarnation of Christ and of His marriage with the Church; let it contain a promise of grace to them that exercise it as Christians should do: it is therefore indissoluble in the point of right, I confess; that is to say it is the profession of an obligation upon the parties to hold it indissoluble. But is it therefore indissoluble in point of fact? May not the obligation so professed be transgressed? And is not marriage a civil contract, even among pagans and infidels; and that by God's appointment? And may not the law, which God hath restrained the marriage of Christians to, presuppose the conditions of a civil contract? And are not civil contracts void when one party transgresseth the condition on which they are made? . . .

Again at p. 321 he writes:

But do I therefore say that the Church cannot forbid the innocent party to marry again? or is bound by God's Law to allow it? All ecclesiastical law being nothing but the restraining of that which God's law hath left indefinite, and the inconveniences being both visible and horrible. I conceive I am duly informed that George [Abbot] late Archbishop of Canterbury was satisfied in the proceeding of the High Commission Court, to tie them that are divorced from marrying again, upon experience of adultery designed upon collusion to free the parties from wedlock; having been formerly tender in imposing that charge.[1] . . . But they that would not have the laws of the Church and the justice of the land become stales and panders to such villanies must either make adultery death, and so take away the dispute; or revive public penance and so take away the infamy of his bed and the taint of his issue, that shall be reconciled to an adulteress; or lastly bear with that inconvenience, which the casualties of the world may oblige any man to, which is to propose the chastity of single life instead of the chastity of wedlock, when the security of a man's conscience and the offence of the Church allows it not. But though this in regard of the intricacies of the question and the inconveniences evident to practice, may remain in the power of the Church; yet can it never come within the power of the Church to determine, that it is prejudicial to the Christian faith to do so, as by God's law. And the Church, that errs not in prohibiting

[1] The allusion is said (Thorndike's Works, vol. iv, p. 321, n. 1) to be to the decree of nullity of marriage between Lord Essex and Lady Frances Howard in 1613.

marriage upon divorce for adultery, will err in determining for matter of faith, that God's law prohibits it; so long as such reasons from the Scriptures [semble in favour of remarriage after divorce] are not silenced by any tradition of the whole Church. . . .

Finally, on p. 327, Thorndike writes:

And can any man be so senseless as to imagine, so impudent as to affirm, that the whole Church agreeing in taking the fornication of married people to signify adultery, hath failed; but every Christian prince that alloweth and limiteth any other causes of divorce, all limiting several causes, attaineth the true sense of it? Will the common sense of men allow that homicide, treason, poisoning, forgery, sacrilege, robbery, man-stealing, cattle-driving, or any of them is contained in the true meaning of "fornication" in our Lord's words? that consent of parties, that a reasonable cause, when pagans divorced "per bonam gratiam" without disparagement to either of the parties, can be understood by that name?

In the collection of MSS. belonging to the judge Sir Christopher Yelverton (1535 ?-1612), now in the possession of Maud Lady Calthorpe, there is a MS. which consists of two papers or memoranda on Divorce. The first advocates Divorce with power to remarry, but on the ground of adultery only. The second is a criticism of the first, and while admitting separation *a mensa et thoro* by reason of adultery, denies the right to remarry. No name is attached to either paper. The handwriting of each is contemporary with Yelverton. The following extracts sufficiently indicate the views of the authors:

The first paper (at p. 21*a*):

Me thinketh he that is so far from continency as his late wife had not in her to satisfy his desires and so taketh another is taught a wrong remedy to have no wife at all, the like I say of her that is found faulty with others besides her husband, thinking a highway to give her none when she thought her first husband too few and take another; but then if the divorced shall marry again by what ways may the disorder be stayed which men fear will follow? I go not so far that who lusteth shall marry, but that it is not unlawful for them to marry

again, leaving this to the higher powers both how and when the divorced shall marry again. If it be by the King's Majesty's licence, methink it then should easily be brought to pass that there could no great hurt ensue. His Majesty's wise counsel may and would eftsoons provide a bridle for the rash and a remedy for those that are to be holpen. I go no further but to see whether the thing may be done, God not offended, wishing yet that if it be lawful the remedy may be licensed where else the disease seemeth incurable.

The second paper (at p. 35*b*):

The author [*i.e.* of the first paper] would prove that God dissolved marriage otherwise than by death which though it were true yet it is out of this matter for though it were so yet were it not proved that God dissolved it by fornication and that is it this author taketh in hand to prove, and for to prove it hath none other scripture but only this—"*exceptâ causâ fornicationis.*"

. . . . . .

At page 37*b*:

. . . but whether a man may have and take a new [wife] is the whole matter, the contrary whereof St. Austin hath ever defended and doth here more and more.

. . . . . .

At page 39*a*:

The understanding of them [the Fathers, especially St. Jerome, St. Chrysostom and Origen] dependeth of the words "leaving of his wife" for all they will a man to leave his wife continuing in advoutery and thereby to eschew the danger and consenting to her sin. But none writeth so of leaving that the man may leave his wife and take another wherein consisteth the matter of this book and St. Jerome agreeth with St. Austin that if the woman repent she is no more an advoutress but whether she repent or not repent no man speaketh of leaving with liberty to marry another.

And as for Origen's saying in the resemblance of Christ's marriage of the church, the synagogue being, as it were, for adultery left, as for the one part a man may leave his wife as Christ left the synagogue but as the synagogue leaving that darkness shall be reduced [*i.e.* brought back] to one flock so is

there left remedy by reconciliation to the wife in advoutery and therefore cannot any new marriage be admitted to cut away the same.

Finally where the author would seem by mishandling of this great Clerk's sayings [*i.e.* Origen's] to make the matter litigious that is so clear, he deserveth therein other answer than I will make now. It were pity this matter that hath so long lien quiet should seem to be doubted in without greater grounds than can be brought.

. . . . . .

But it were pity it were known that such a thing were desired to be put in ure as might not, if it were lawful, without an entry to much inconvenience take effect.

It will be observed that although these writers, whoever they were, differed as to whether remarriage after divorce was or was not agreeable to "God's law," they both indicate that at the time they wrote such remarriage was not in fact permitted by the law of the land.[1]

I will conclude with a quotation from a writer who was neither a theologian nor an Englishman, but a civil lawyer of very great reputation in the sixteenth and seventeenth centuries, viz., Alberico Gentili (1552-1608), an Italian who came to England in 1580 and became Regius Professor of Civil Law at Oxford in 1587. He wrote a treatise "*De Nuptiis*." The preface is dated August 1600. The sixth book of this treatise is entitled "*De repudiis et secundis nuptiis*," and consists of an elaborate dissertation, 124 pages long, on Divorce. Gentili combats very freely the views of Bellarmine on the one side and of Beza on the other. His own final conclusion is—"Mihi certissima hic sedet sententia ut ab illa una causa [*i.e.* adultery] nullam ob causam dis-

[1] These papers are described in Historical MSS. Commission, 2nd Report, App., p. 42 as follows: "Vol. xxxiv, a treatise of the 'Civil Law in case of divorce, whether either party may marry again,' *Begins* 'There hath been and yet is no small doubt among the learned'—(39 leaves in large writing.)" This title, however, does not occur in the MS. itself, which, as I have said, consists of two distinct documents.

cedatur. Nulla par est adulterio, nulla major." (*De Nuptiis*, ed. *Hanoviae*, 1601, p. 691.)

It will be noted that, with few exceptions, the English Reformers, who regard adultery as a valid ground for divorce *a vinculo* with right of remarriage do not go further. The wider grounds, such as desertion and implacable hostility, which found support amongst continental Protestants, and were included in the Reformatio Legum, do not seem to have been defended by English divines generally.

Further, there seems to have been considerable divergence of view between different English divines, and even between the opinions of the same divines on different occasions, as to the effect of adultery with regard to dissolution of marriage. Some thought that adultery *ipso facto* dissolved a marriage. This was the view of the authors of the opinion given, and apparently acted upon in the case of William Parr, Marquis of Northampton (1547-52), the facts of which will be presently stated. Archbishop Cranmer, Dr. May, and Bishop Ridley were members of the commission appointed to determine whether the adultery of Parr's wife left him free to remarry. They were also, as we have seen, all connected with the preparation of the Reformatio Legum. Yet in the Parr case it seems to have been laid down that adultery *ipso facto* dissolved marriage and was the sole ground for allowing remarriage (Burnet's Ref., Part II, Book I, Records, No. 20): while the Reformatio (De Divortiis, caps. 1, 5, 7, 17) proceeds on a diametrically opposite view of both points. Coming to a rather later date, Bishop Andrewes (writing probably in 1601) says:

> First I take the act of adultery doth not dissolve the bond of marriage; for then it would follow that the party offending would not upon reconciliation be received again by the innocent to former society of life, without a new solemnizing of marriage, insomuch as the former marriage is quite dissolved, which is never heard of and contrary to the practice of all Churches. (Andrewes' Minor Works, Lib. Angl: Cath: p. 106.)

In the same paper Andrewes combats what he calls "the conceit of some later divines" that "the word of God" permits remarriage in cases of adultery. He admits therefore that this view was current when he wrote.

IV

Ecclesiastical Law as to Divorce

Having now stated such information as I have been able to obtain as to the authorship of the Reformatio Legum and as to the independently expressed opinions on Divorce of some of the leading Churchmen of the sixteenth and seventeenth centuries, the conclusion seems to me to be inevitable that the Reformatio Legum, as we have it, so far as the section on Divorce is concerned, is merely a literary relic representing the views derived from continental sources of certain individual Churchmen of great eminence and influence. These views were no doubt also adopted by the rank and file of a section of extreme Protestants in this country, but, except during a few years of Edward VI's reign, were never dominant in the Church of England. On the other hand, the opinion that adultery was on biblical grounds a valid reason for the complete dissolution of marriage seems to have been widely, I should even say generally, held by English divines in the latter half of the sixteenth century.

I proceed to seek an answer to the second question which has been raised, namely, whether the Reformatio Legum, though not formally authorized, was in fact acted on in matrimonial causes during the latter half of the sixteenth century. As during this period, and, of course, for centuries afterwards, the State left the decision of these causes to the Ecclesiastical Judges whose duty it was to administer the law of the Church of England, what we have really to ascertain is (1) what was the law of the Church of England as to Divorce in

the latter half of the sixteenth century, and (2) what was in fact done in professed execution of that law.

There can be no doubt as to what was the law of the Church of England prior to the Reformation. It was the law of all Western Christendom that marriage was indissoluble during the joint lives of husband and wife. If a specially English authority is required for this proposition it will be found in the well-known compendium of Church Law supposed to have been written about 1385 by John de Burgh, Chancellor of the University of Cambridge, and entitled "Pupilla Oculi," under the heading "De accusatione conjugum de adulterio" (cap. xiv, fol. cxl., ed. 1516), "Maritus potest uxorem accusare et dimittere propter adulterium et uxor virum; quos in tali casu ad paria judicantur. Non tamen ea vivente potest alteri nubere." The writer cites various passages from Gratian's Decretum, namely, 2nd Part, Causa xxxii, Quest. 1, cap. iv; Quest. v, cap. xix and cap. xxiii; and Quest. vii, cap. vii.[1]

In Pollock and Maitland's Hist. of English Law, vol. ii, p. 392, the writers, after referring to a case of Jews whose union was held to be outside the Christian law of marriage, say:

> This however was a rare exception to a very general rule and for the rest the only divorce known to the Church was that *a mensa et thoro* which while it discharged the husband and wife from the duty of living together, left them husband and wife.

It is indeed alleged on the authority of one or two text writers that in very ancient times, centuries before the period we are concerned with, Divorce *a vinculo* was granted in England. I do not pause to discuss this extremely dubious contention, because if such a state of things ever in fact existed, it must have been due to action of the State overruling the law of the Church, and it had certainly ceased to exist, wholly and entirely,

[1] Observe that both the "Pupilla Oculi" and the Decretum insist on equality of treatment for man and woman. See in addition to the passages cited in the text Causa xxxii, Quest. v, caps. xx and xxi.

before the middle of the sixteenth century, when the Church of England's breach with Rome became complete. The new era, therefore, opened with the law of the indissolubility of marriage established and acknowledged in the Church of England. No change in this law was purported to be made by the marriage legislation of Henry VIII. No canon was enacted which could at all affect the subject until the canons of 1597 consolidated into the body of canons of 1603-4, which will be dealt with presently. On the other hand, we are not left in ignorance of what view those concerned in the actual administration of the ecclesiastical laws in the latter half of the sixteenth century held and acted upon.

Oughton's "Ordo Judiciorum sive methodus procedendi in negotiis et litibus in foro ecclesiastico," though first published in 1738, preserved for us a collection of rules, established in the Ecclesiastical Courts, which had in fact been matured many generations before that date. I possess a MS. copy of this collection which, as it mentions Richard Cosin as the then Dean of the Arches, must have been written during his tenancy of the office (1590-7). In both the printed book and the MS. the following passage occurs (Oughton, Tit. ccxv, p. 318, MS. fol. 103) under the heading: "De tenore sententiae in causa divortii seu potius separationis a thoro et mensa propter adulterium sive saevitiam," namely:

". . . Tamen de jure canonico legibus hujus regni in hac parte approbato non licet personis in his casibus (videlicet nec propter adulteriam, nec propter saevitiam) divortiatis aut separatis ad secundas convolare nuptias viventibus prioribus maritis vel conjugibus. Quia vinculum matrimoniale matrimonii semel perfecti non potest ab homine dissolvi nisi morte naturali."

Again, in Clarke's Praxis, a work of great authority on questions of ecclesiastical practice, from which Oughton derived the chief contents of his book, the same passage occurs (Tit. cxiii, ed. 1684) in identical terms. Clarke's preface is dated 20th April 1596. *See also* in the other great text-book of ecclesiastical practice

(Conset, 1681, p. 279, 3rd ed., 1708) a statement to the same effect.[1]

It would seem, therefore, that practitioners in the Ecclesiastical Courts in the closing years of the sixteenth century not only were quite clear that at that time Divorce *a vinculo* could not be obtained for adultery, cruelty, etc., but were unaware of any change in the law in this respect. It is difficult to believe that if the courts in which they had practised all their lives had been accustomed for a period beginning about 1547 and lasting for 50 years to divorce *a vinculo* for adultery, these writers would have given no hint of so momentous a fact.

V

Divorce in the Ecclesiastical Courts

The actual records of proceedings and sentences in Ecclesiastical Courts for the period from 1547 (the accession of Edward VI) to 1603 (the date of the death of Queen Elizabeth) are plentiful, but, unfortunately, for the most part unindexed and practically inaccessible. I have made some search at the Public Record Office, where such records as have survived of the Court of Delegates (the then court of final appeal in ecclesiastical causes) are preserved. An Act book (1539-44) and Sentences from 1585 are all that remain prior to 1601. I found one case only of divorce (Fayrfax *v.* Fayrfax); it was a case of cruelty by the husband, and the sentence (9th June 1543) separated the parties "a consortio, thoroque et mensâ ac mutuâ cohabitatione." "Donec

[1] In one of the books of the Consistory Court of Salisbury containing records of proceedings dated 1598-99 there are a few pages in which there appears (in a contemporary handwriting) a statement headed "De Causis Matrimonialibus," according to which cruelty is "causa divortii seu potius separationis à thoro et mensâ." I am indebted for this information to Mr. A. R. Malden, the Registrar of the diocese of Salisbury.

et quousque mutuo eorum consensu sese duxerint reconciliandos."[1] This, therefore, was not a divorce *a vinculo*, because it contemplated reconciliation and a return to cohabitation. The Records of the Court of Arches (the court of first appeal so far as the province of Canterbury is concerned, and the chief spiritual court in England) are missing until about the time of the Restoration (1660). The records of the London Consistory Court for the period in question are preserved in Somerset House. They have been searched on my behalf by Mr. Kenneth Munro, of the London Diocesan Registry. They contain cases of Divorce *a mensa et thoro* for adultery, cruelty, etc., but none of divorce *a vinculo* on those grounds. The London Consistory Court was the most important court for matrimonial causes in the country. I have made application to the registrars of all the diocesan Consistory Courts in England which were in existence in the sixteenth century. All but two or three possess records relating to the period in question, and such information as could be obtained without an exhaustive perusal and indexing of hundreds of volumes of MSS. in the difficult and contracted legal writing of the time, has been most readily furnished to me. In the result I have not found, and no one of those whom I have asked has ever heard of, a sentence of divorce *a vinculo* for adultery, etc. in any of the Consistory Courts.

I may refer here to a case the account of which is in the records of the Vicar-General's Court of London (1546). My knowledge of the case I owe to the kindness of Mr. Francis W. Fincham of the Probate Registry, Somerset House. It illustrates two points, (1) that remarriage after divorce was not recognized by the ecclesiastical courts, and (2) that separation *a mensa et thoro* was granted for reasons which would not now support a petition for judicial separation. In August 1546 Thos. Barnes complained to Dr. Crooke, the Vicar-General of London, that the demeanour of his

[1] See a copy of this sentence, App. B.

wife Alice was such that he could not longer continue with her and desired to be divorced from her. The Vicar-General counselled reconciliation, but on a second and third application being made by Thomas, Alice consenting, divorce from bed and board was granted. The Vicar-General specially warned them both that they must not attempt remarriage during the remainder of their joint lives. In November 1546 Thomas obtained from the Faculty Office of the Archbishop of Canterbury an ordinary licence to marry, without publication of banns, one Margaret Bawdewyn. It is plain from the entry in the Faculty Register (A. 228, 3) that Thomas did not disclose the actual circumstances of his case. Thomas and Margaret were married under the authority of the licence at St. Mary Woolnoth Church in the City of London. In December 1546 Thomas had to appear before the Vicar-General to explain his apparent bigamy. His defence was, not that his divorce from Alice made it lawful for him to marry Margaret, but that in fact Alice had a husband living when she purported to marry him (Thomas) and that consequently he was never legally married to Alice. Alice's first husband was said to be still living. The Vicar-General was inclined to be sceptical. At any rate his sentence was that Thomas was forbidden to cohabit with Margaret until he could produce Alice's first husband, and in the meantime Thomas was ordered to do public penance, *more penitente* (Vicar-General's Book II, p. 8).

There were a very considerable number of other Church courts (*e.g.*, archdeacons' courts, commissary courts of deans and chapters, and other special or peculiar jurisdictions) which entertained matrimonial suits. Their records have been scattered, and no doubt have largely perished. But Hale's Precedents in Criminal Causes (1847) provides a very useful and instructive account of 829 causes almost all of them belonging to these minor Church courts and covering the period from 1475 to 1640. There are some cases

where sentence of divorce *a mensa et thoro* was pronounced, but these were not intended to take effect as divorces *a vinculo*, because the separation is expressly made terminable on reconciliation (*see* [1566] *c.* Alborough et uxorem ejus de Danbery, No. ccccxli, p. 148). Care must be taken not to attribute too much importance to the evidence, such as it is, which has been collected of the actual proceedings in the ecclesiastical courts. Our knowledge even of the records that exist is far too superficial and fragmentary to entitle us, on the strength of it alone, to make definite assertions of what was or what was not done by these courts. Possibly in some of the minor courts, especially in those remote from London, it might be found on investigation that strange and irregular things were sometimes done.

A case of the marriage of a divorced person in church in 1576 has been recently recorded in Notes and Queries (11th Series, vol. iii, p. 226). In the Parish Registers (marriages) of St. Michael le Belfry, York, occurs the following entry under the year 1568: "Richard Cowpland & Bettris Atkinsone the xvi day of January." To the original entry this note is added: "devorced by order of lawe 1576 in the Deane and Chapter Courte of the Cathedral Church of Yorke me Robto Burland occulat: teste humoi [hujusmodi] repudii." In the same Registers for 1576 there is the following entry: "Thomas Cooke servaunte to Mr Anthonie Rookbye and Beatrix Atkinsone als Cowplande weare maryed together in this parish Church at lawfull tyme of ye daye the bannes first lawfully asked the xxviith day of Januarie 1576 the said Beatrix beinge first devorced from Richard Cowplande by lawe and lycensed to marye." The entry is incompletely given in Notes and Queries, the statement as to banns being omitted. St. Michael le Belfry Church was in the gift of the Dean and Chapter, and the parish was within the peculiar jurisdiction of the Dean and Chapter: so that the divorce would be as stated, in the Dean and Chapter Court, the licence to marry (if any) would be granted by the Dean and Chapter and the action of the

incumbent of St. Michael le Belfry would be under the control of the Dean and Chapter, to whose visitation and not that of the Archbishop of York he was immediately subject. The cause of the divorce is not stated and there is nothing to lead to the conclusion that it was not an ordinary case of nullity in which a sentence declaring the marriage void had been quite regularly pronounced. In all probability the case is similar to Chew's case stated below (p. 56), with the difference that in Chew's case we can put our hand on the sentence and in this case we cannot do so. If, however, it was a case of divorce *a mensa et thoro*, it would be an instance of the kind of irregularity I have referred to as not unlikely to be found in the doings at this date of the minor ecclesiastical courts. The mention of banns seems to exclude the possibility of a licence in the ordinary sense having been granted for the marriage. The Court books and Licence books of the Dean and Chapter for this period are wanting.[1]

It is a highly important and significant fact that no trace has been discovered of any sentence of any ecclesiastical court purporting to grant divorce *a vinculo* on the ground of adultery, cruelty, or desertion during the period when, if certain allegations which have been made were well founded, the Church courts had without authority adopted a practice of pronouncing such sentences.

This would be the proper point in our survey at which the case of Sir John Stawell should be stated and discussed, but for the fact that it is separately and fully dealt with in Part II of this work. It is an important case of special interest, because of the conditional sanction given by Archbishop Parker to a remarriage after a divorce *a mensa et thoro*, and his apparent refusal at a subsequent date to recognize the marriage. The facts, now collected for the first time, are well worth consideration. They illustrate in the clearest way, notwithstanding the obscurity of some points, the substantial

[1] I am indebted to Mr. Arthur V. Hudson, Provincial Registrar of York, for the above information.

adherence of the law in the sixteenth century to the principle of the indissolubility of marriage.

VI

VISITATION ARTICLES AND PARISH REGISTERS

THERE are still extant a large number of sets of Articles and Injunctions issued for the purpose of Royal, Provincial and Diocesan Visitations from 1547 to the beginning of the seventeenth century. Most of these contain inquiries as to whether any person who had been divorced or separated, had married again. Such offenders are generally described along with three other classes of wrongdoers, viz. (1) those who having married within the forbidden degrees have been divorced [*i.e.*, *a vinculo* for nullity], and "do yet cohabit and keep company together"; (2) those who though "married outside" these degrees [*i.e.*, not within the forbidden degrees] have "unlawfully forsaken their wives or husbands and married others"; and (3) "men that have two wives, or women that have two husbands" [*i.e.*, persons who have committed bigamy]. It is plain that in each case the relation is treated as invalid. I have cited Abp. Grindal's Provincial Visitation Articles at York (1571, 2nd Rep: Rit: Comm., p. 411), and at Canterbury (1576, Cardwell's Doc: Ann., vol. i, p. 414, ed. 1846). Different Visitation Articles vary in wording and in the fullness of their contents. I cannot pretend to give a complete list of such articles, but the following will show that they are numerous.

1547.	Ed. VI's Injunctions and Articles.	1 Card: D.A.	30, 59
1554.	B^p^ Bonner's Articles (London).	Ditto.	154
1559.	Elizabeth's Articles following Injunctions.	Ditto.	247
1561.	B^p^ Parkhurst's Articles (Norwich).	2^d^ Rep: Rit: Com:	403
1569.	„ „ „	Ditto.	405
1563.	Abp. Parker's Prov^l^ Articles.	Ditto.	404
1569.	„ Diocesan Articles.	1 Card: D.A.	361

1575. Abp. Parker's Prov[l] Articles.	2[d] Rep: Rit: Com:	417
1570-4. B[p] Cox's Articles (Ely).	Ditto.	407
1577. B[r]. Aylmer's Articles (London).	Ditto.	421
1586. „ „ „	Ditto.	434
1588. Abp. Whitgift's Articles for Sarum Dio:	2 Card: D.A.	35
1601. B[p] Bancroft's Articles (London).	2[d] Rep: Rit: Com:	439

Bp. Thornborough's Articles (Bristol), of 1603 (2nd Rep: Rit: Comm., p. 443), inquire whether the churchwardens know of "any that being lawfully divorced for adultery have married again."

The proper inference to be drawn from these Visitation Articles and Injunctions is that the Ecclesiastical Authorities of the day considered that sexual irregularity (*e.g.*, bigamy, marriage after divorce, and desertion on the ground of pretended nullity) was sufficiently common to make it right to require churchwardens to search in their parishes for, and to present to the Ordinary, cases where it existed. This was in order that guilty parties might be punished for their breach of the laws of the Church as recognized and enforced by the State. That there was need for action of this sort we cannot doubt when we remember such statements as that cited on a later page from Strype's Memorials (Book II, chap. xxiii, p. 443), or call to mind the second part of the Homily against Adultery.[1] It may also be regarded as certain that there were instances, then as now, where clergymen (generally, but not always unwittingly) performed marriages which were forbidden by law, and invalid. Abp. Laud's action in Lady Rich's case mentioned later (p. 74) is an example, where the clergyman knew he was doing wrong. Barnes's case stated above (p. 49), is another, where the clergyman was innocent, and no doubt there were other instances. But to suppose that there was

[1] "Of this vice cometh a great part of the divorces which now a days be so commonly accustomed and used by men's private authority to the great displeasure of God and the breach of the most holy knot and bond of matrimony" (First Book of Homilies, published at the beginning of Edward VI's reign, ed. 1864, S. P. C. K., p. 132).

any general acquiescence by the clergy in the notion that divorced persons could remarry would be, I think, as erroneous as the assertion that the Church courts acted on that view.

Happily we possess in the marriage registers, many of which have been printed during recent years, some opportunity of forming a reliable opinion on this point. More than 850 registers (*i.e.* all in the great collection of them in Lincoln's Inn Library) have been searched for the period in question, with the result that only three cases can be found which seem to be instances of remarriage in the lifetime of a former spouse. I shall deal with these cases presently. This negative result derived from examination of registers of parishes in every part of England is, I venture to think, decisive as to the non-existence in the sixteenth century of any widespread practice on the part of the clergy to permit the remarriage of divorced persons. Making all allowance for the meagreness and frequent carelessness of the entries, it still seems to me incredible that, if such marriages had taken place, they would have left no trace on the registers of so great a number of parishes scattered over the whole country.[1]

[1] Mr. J. E. G. de Montmorency, in a learned Memorandum which is printed as an Appendix to the Report of the Divorce Commission (Appendix 1), considers that the description "former wife of" in lieu of "widow" which sometimes occurs in marriage registers, may indicate that women so described had been divorced. This conjecture has not been proved in a single case. No one can say there never was such a case, there may have been. But a study of the registers shows clearly that speaking generally the notion is baseless. "Widow," "former wife," "late wife," will be found on the same page of a register, all meaning the wife of a deceased man, whose death in many cases is entered, perhaps a few months earlier, in the Burial register of the same parish. Thus at St. Peter's, Cornhill (Harl. Reg. Series, vol. i), on 7th December 1582, "the late wife of George Cotten, grocer" was married. On turning to the Burial register we find a "George Cotton, grocer" having died "of a consumption" was buried on 19th May 1582. Again on 11th November 1583 the "late wife of Melchisedeck Bennet" was married. But we find that on the 28th August 1582 "Melchisedecke Bennet" having died "of a surfet" was buried. It should be added that the entries of the mar-

The three cases I have mentioned above are as follows: First, in the Register of St. Alphege, Canterbury (pp. 107-108), an entry occurs under date 1576, 8th July: "Recharde Kinge to Annie Jouse." "This Richarde Kinge had another wife lyving and was putt from this woman again the 15 March 1578." This speaks for itself. The second case relates to the register of Christ Church, Newgate Street, in the city of London (Harl. Reg. Series, vol. xxi, p. 203). An entry occurs under date 2nd November 1579, thus: "John Skynner and Margery Conoway from S[t] Andrewes in the Wadrap and having another wyfe alyve did pennance at Poles Crosse." Unfortunately the existing register is not the original, but a copy made in 1587, so that the entry is all in one hand, but there can be little doubt that the words "and having," etc., were a note added subsequently to the registration of the marriage. This may have been a case, like the preceding one, of simple bigamy, or it may have been a case like that of Barnes noted above (p. 49), where a man suppressing the fact of his former marriage, relying on a divorce *a mensa et thoro*, and concealing the circumstances, got himself married again. But in either view there was no acquiescence by the Church. Just as in Barnes's case, he was put to penance and probably, as in that case, was required to separate from his new wife. The third case arises on the marriage registers of Whalley (Lancashire Parish Register Society, vol. vii, p. 91). The entry runs:

> 22[d] Jan: 1566. William Chewe and Agnes Badyll. by virtue of a divorce made by the law at Chester bearing date in the month of January A.D. 1565, put to the keeping of Robert Blackburne.

The proceedings in the Consistory Court of Chester are still extant, and it has been possible to ascertain the

riages of these "late wives" are closely preceded and followed by similar entries as to "widows."

nature of the divorce. It appears that in 1563 Chew had gone through the ceremony of marriage with Janet Chatburne. Two years later she instituted proceedings in the Chester Consistory Court to have the so-called marriage declared void on the ground that she had been coerced, had never consented to the marriage, and never consummated it. The Judge by his sentence, dated the 28th July 1565, declared the marriage void *ab initio* on these grounds, and divorced the parties.[1]

It will thus be seen that the only cases which the examination of 850 parish registers enable us to produce, dealing with remarriage in the lifetime of a former consort, give no support to the view that after divorce *a mensa et thoro*, remarriage was permitted.

VII

DIVORCE IN THE KING'S COURT

THERE are several references to the effect of divorce *a mensa et thoro* in not determining a marriage to be found in the reports of cases in the King's Courts, during the latter half of the sixteenth century.

In Mich. term of 44 & 45 Eliz. a case of *Stephens* v. *Totty* was decided in the King's Bench (Cro. Eliz., p. 908). It raised the question whether a husband, divorced *a mensa et thoro* from his wife, could receive and give a valid receipt for a legacy bequeathed to her. The Ecclesiastical Court held that he ought not to be allowed to do so. Prohibition proceedings were brought, but the King's Bench agreed that the husband's release was bad, being tainted with fraud. Nevertheless the report says: "All the justices held that in regard this separation does not avoid the marriage absolutely, but they still remained man and wife, . . ."

Again in *Powel* v. *Weeks*, Trinity Term, 2 James I,

[1] I am indebted to the kindness of Mr. Richard Farmer, Registrar of the diocese of Chester for copies of the depositions and sentence in this case.

C.B. (Noy's Reports, p. 108), the point is thus stated: "In dower it was resolved that a divorce *causa adulterii* is no bar of dower because it is but *a mensa et thoro* and not *a vinculo matrimonii*."

In *Rye* v. *Fuljambe*, 13th February, *anno* 44 Eliz., in the Star Chamber (Moore's Reports, p. 683), it was held that Fuljambe having divorced his first wife for adultery and married Rye's daughter, had contracted a void marriage with the latter, "quia le primer divorce n'est que a mensa et thoro et nemy a vinculo matrimonii." The report adds that Archbishop Whitgift stated that he had summoned to Lambeth a body of the most wise divines and civilians, and that they all agreed in this view.

There is another report of this case in Noy's Reports, p. 100, and it is also incorrectly summarized in 3 Salkeld's Reports, p. 137. It will be seen that this case, which has sometimes been referred to as effecting a revolution in the then existing practice—a bringing of the law back to "its old state before the Reformation" (Rep: R.C. Divorce, 1853, p. 36, Sel: C. of H.L., 1844, Q. 226, and 3 Salk., 137), was in fact in entire agreement, not only with other cases decided at about the same date, but also with the pre-existing practice so far as we know it.[1]

[1] The Bill and Answer and the Examination of the defendants on interrogatories exist in the Public Record Office (Star Chamber Proceedings, Eliz. R. 16.22. R. 38.5). The suit was by Ed. Rye of Aston, in the county of York, father of Sarah Poage (widow). He alleged that Mrs. Poage being entitled through her late husband to the rectory and manor of Misterton, was persuaded by Hercules Fuljambe, who represented himself as a widower, to marry him and in contemplation of such marriage to grant him a lease of the rectory and manor for forty years; and that it transpired that Fuljambe had one wife, if not two, still living, and that Mrs. Poage having left him, he retained forcible possession of the estate. By his Answer Fuljambe alleged that the marriage and the lease were pressed on him by Mrs. Poage, and as to the other wives he pleaded as follows: "Touching the said marriage this defendant Hercules Fuljambe saith that it is true that at the time of the said marriage with the s[d] Sarah Poage there were two other gentlewomen living who had been married

It may be well to add the testimony of Sir Edward Coke (1552-1634), who lived through the period under notice, and was in the best possible position to obtain accurate knowledge of the matter. In his commentary on sec. 380 of Littleton's text (Coke upon Littleton, 235*a*, 1st ed., 1628), after enumerating causes of nullity of marriage, Coke continues:

A mensa et thoro as causa adulterii, which dissolveth not the marriage a vinculo matrimonii, for it is subsequent to the marriage. And the divorce that Littleton here speaketh of is intended of such divorces as dissolve the marriage a vinculo matrimonii and maketh the issue bastard because they were not justae nuptiae. And therefore in Littleton's case though the husband and wife be divorced causa adulterii, yet the freehold continueth, because the coverture continueth.

In other words, Coke knew nothing of a marriage (valid when it was solemnized) being dissolved on account of the subsequent action of the parties. It seems to me inconceivable if the courts had been decreeing such sentences for the first fifty years of Coke's life, including a time when he occupied a most conspicuous position at the Bar, that he should have been ignorant of the fact.

It would seem that this idea that during the latter half of the sixteenth century divorces *a vinculo* on the

to this defendant but this defendant saith that he was informed by divers divines and civilians of great account and learning whose counsel he used therein [that he] was before his marriage with the said Sarah Poage was [*sic*] lawfully and according to the ecclesiastical laws of this realm divorced from the s^{d} two gentlewomen which had been his former wives and thereby lawfully might by the laws of God and this realm as he was informed by the s^{d} divines & civilians lawfully marry again which s^{d} divorces he this def^{t} hath, the one of them under the authentic seal of the Bishop of Coventry and Lichfield and a copy of the other under the hand of Mister Doctor Cosens" [Dean of the Arches]. The object of the suit was to regain possession of the estate on the ground that the marriage was bad and the lease fraudulent. Fuljambe in his Answer makes but a faint attempt to defend the marriage but insists that he is not to blame and that the lease was obtained by him *bona fide*. The Public Records tell us no more about the case so far as the marriage is concerned.

ground of adultery were granted by the Church courts, but that Fuljambe's case marks a change of opinion and of practice, and a reversion to the old system of divorce *a mensa et thoro* only, is based upon Salkeld's note on Fuljambe's case, to which reference has already been made. It is to be found at page 137 of the third volume of his Reports which was published in 1724, and therefore has no claim, so far as this case is concerned, to the authority of a contemporary record. Salkeld lived from 1671-1715. The passage runs thus:

> A divorce for adultery was anciently a vinculo matrimonii; and therefore in the beginning of the reign of Queen Elizabeth, the opinion of the Church of England was, that after a divorce for adultery the parties might marry again; but in Fuljambe's case, anno 44 Eliz. in the Star Chamber that opinion was changed; and Archbishop Bancroft upon the advice of divines held that adultery was only a cause of divorce a mensâ et thoro.

It was Whitgift and not Bancroft who had to do with the case, and the Lambeth assembly of divines and civilians summoned by Whitgift was, it would seem, a private meeting quite outside the Court of the Star Chamber in which the Archbishop was probably one of the judges, but not the sole judge. Salkeld was very likely right in thinking that the dominant opinion amongst leading Churchmen at the end of the sixteenth century differed materially from what it had been in the middle of the century. But he was merely jumping to a conclusion, and, I venture to think I have shown, a wrong conclusion, in assuming that the law of the Church of England, and the practice of the Church courts, had varied in accordance with the change of views of individual divines and doctors. The distinction which Salkeld has overlooked is really the key to the whole problem. Happily it has been made clear for us by a contemporary witness of first-rate competence in this context, viz., Bishop Lancelot Andrewes, who (*supra*, p. 31) wrote a "Discourse against second marriage after sentence of Divorce with a former match, the party

then living" (Andrewes' Minor Works, Lib. Angl: Cath: p. 106). I am not concerned now with his arguments against remarriage after divorce, but with the basis of fact on which he proceeds. He treats it as a matter beyond controversy, and not denied that the Church courts did not grant divorce *a vinculo*, that the view which he desired to combat was confined to some recent divines, and that it had brought them into conflict with what he describes as "the present practice of the law ecclesiastical."

After discussing whether the act of adultery does not *ipso facto* dissolve the bond of marriage (the view taken in Parr's case, *see* pp. 66, 67), Andrewes continues:

> Secondly, the sentence as I take it doth not relieve, for there is no lawful sentence of any court in case of divorce, but it ever containeth an express inhibition to either party to marry with another, with intimation in flat terms that from the time that either of them shall go about any other marriage, *quod ex tunc prout ex nunc et ex nunc prout ex tunc*, (it is the style of the court,) that present sentence shall be void to all purposes and they in the same case as if it had never been given. These both failing, the word of God is sought to; where let me tell you first, that during the primitive Church, ever till now of late, the judgment of the divines and the present practice of the law ecclesiastical were both one; and great reason why; for well known it is, that the authority of the fathers was the ground of the ancient canons, by which the law in this case is ruled. So that but for the conceit of some latter divines, there need not be sought any opposition between law and divinity in this question, nor that pitiful distraction happen, which we daily see, Divines to give their hands for licence to that, for which law will convent men and censure them too.

In this context John Godolphin (1617-78), though a writer of later date, ought perhaps to be quoted. His "Abridgment," a book of recognized importance in Ecclesiastical Law, was largely appropriated by Ayliffe (1676-1732) in compiling his "Parergon." The 36th chapter of the abridgment is entitled "Of Divorce as also of Alimony." His general treatment of the subject need not detain us, but in the following extract

(p. 504, 3rd ed., 1687) he conveys very much the same impression as Andrewes as to the difference between the divines and the lawyers :

> Although the doctors of divinity are much divided in this point of second marriage whilst the divorced parties are alive; yet the law generally seems much more to incline to favour such second marriages where the divorce is *ex causâ praecedenti* than where it is *ex causâ subsequenti*; for when it happens *ex causâ precedenti* as when the degrees prohibited are violated, pre-contract, frigidity in the man, impotency in the woman, or other perpetual impediment, the marriage was void and null *ab initio*, it being a rule and a truth in law that *non minus peccatum jungere non conjungendos quam separare non separandos*; but where the divorce happens *ex causâ subsequenti*, there the marriage was once good and valid in law and therefore (as some hold) *indissoluble* and that such subsequent cause have no influence *quoad vinculum matrimonii* but only *quoad separationem a mensa et thoro* which is but a partial or temporal not a total or perpetual divorce.

VIII

THE PARR CASE

The divergence between the law and practice of the Church of England on the one hand, and the opinions of individual members of that Church on the other, could hardly be made plainer than in the above extracts. But the Marquis of Northampton, Parr's case, which has already been mentioned, provides a conspicuous illustration of the same divergence in a concrete case. Oddly enough this case, the facts of which do not seem to have been very carefully collected, has been cited as some proof that from 1550 to 1602 the law did not hold marriage to be indissoluble. (*See* Report of R.C. on Divorce, 1853, p. 8.) I proceed to summarize the facts of this case so far as I have ascertained them. They seem to me to show that even in a time of such great upheaval as 1547-52, even in the case of a nobleman of extraordinary influence and the highest official

position, and notwithstanding the alleged support of great Churchmen like Archbishop Cranmer, the law and practice of the Church and its courts were not forced into inconsistency with their past, and Parliament had to be invoked to do what the Church courts could not or would not do.[1]

1527, 9th February.—William Parr married Anne Bourchier, daughter of the Earl of Essex, in the chapel of the Manor of Stanstead (London Marriage Licences: Harl. Soc., vol. xxv, p. 5).

1542.—William Parr divorced his wife *a mensa et thoro* on ground of her adultery. "But she being convicted of adultery he was divorced from her which according to the law of the Ecclesiastical Courts was only a separation from bed and board." (Burnet's History of the Reformation, Part II, Book I, p. 56.)

[1] Sir Ralph Sadler's case is another illustration of the necessity for legislative action which was felt in the sixteenth century, whenever it was desired to effect a complete release from an existing marriage. Sadler in or about the year 1534 married Elene Barr (*née* Mitchell) the wife of Matthew Barr, who had left her some time before and was supposed to be dead. He however reappeared, and the position of Sadler and his wife (they had children) thus became embarrassing. An act, 37 Hen. VIII, ch. xxx (Statutes of the Realm, Original Act, No. 28) was passed (1546) which accomplished two things, (1) it legitimized all the issue of the union, (2) it provided that if any separation or divorce was prosecuted between Elene and her husband Matthew Barr she should, during Barr's life, be considered a woman sole, as if she had never been married to him, that by the name of Elene Mitchell she might, during the lifetime of Barr, take any grant of lands, etc., independently of him, and by that name sue and be sued as a woman sole. The result of this second provision was that on Barr's obtaining a decree of Divorce, *a mensa et thoro*, in the Ecclesiastical Court, on the ground of her adultery with Sadler, she could become Sadler's lawful wife. This is a good illustration of the inefficacy of a Divorce by the Ecclesiastical Courts to dissolve a marriage. It will be observed that if this case is regarded from the point of view of the Reformatio Legum, Mrs. Barr, instead of being divorced by her husband on account of her adultery, would rather seem to have been entitled to divorce him on account of his desertion. See an account of the Sadler case, Gentleman's Magazine, May 1835, N.S., vol. iii, p. 260. For the Act, see Harl. MS., 7089, f. 453.

1543.—An Act (34 & 35 Henry VIII, ch. xliii [or 39]) passed bastardizing the issue of Anne Bourchier. (For Act *see* Roll of Parliament in H.L. Library. *See also* Journal of H. of Lords, vol. i, pp. 217, 223, 224, 230, 233.)

1547.—Petition of W. Parr (Marquis of Northampton) to the King (Edward VI) for a Commission:

"to determine whether your servant upon all and every the circumstances of his only particular cause, the man, state, form, quality and condition of both the particular parties only pondered and considered without determination of any general cause might without the offence of God for the avoiding of unlawful love whereunto all flesh is prone, and the procreation of children which he necessarily requireth, take to his wife in the life of the s[d] lady the adultress any other lady or gentlewoman unmarried and lawful to take husband." (State Papers, Domestic, Edward VI, vol. i, 1547, No. 32.)[1]

1547, 19th April.—Commission by Letters Patent to Archbishop Cranmer, Bishop Tunstal (Durham), Bishop Holbeach (Rochester), William May (Dean of St. Paul's), Simon Heynes (Dean of Exeter), John Redmayne and Nicholas Ridley (Doctors *sacrae theologiae*), Thos. Smyth (Doctor of Laws), and John Joseph (Bachelor *sacrae theologiae*) to determine:

an lege divinâ licitum permissum ac tolerabile sit quod predictus consanguineus et consiliarius noster (dicta domina Anna naturaliter vivente) desponsare et in legitimo matrimonio habere possit aliam quamvis virginem sive mulierem nubilem. (Pat. Roll, 1 Edw. VI. Part 4, dors. of membrane 23 [27].)

It should be noted that, in accordance with Parr's petition, the question was limited to the conerete one of his case. The general question was not submitted to the Commission.[2]

1547?—Parr married Elizabeth Brooke, daughter of Lord Cobham. (Burnet's Hist. Ref., Part II, Book I,

[1] See a copy of this Petition (App. C).
[2] See a copy of the Commission issued (App. D).

p. 56. *See also* preamble to the Act of 5 & 6 Edw. VI, *post*, p. 67).

1548, 28th January.—"Upon sundry informations brought to the Lord Protector's Grace and Council that the Lord Marquis of Northampton his first wife living had married one named Mistress Elizabeth Cobham which informations were so set forth and aggrieved as being the thing strange normelle and against the law whereof being suffered to escape inreformed, namely, in a person of such representation, might ensue many and great inconveniences to the whole realm; the same Marquis was commanded this day to present himself before their Grace and Lordships being assembled in council at Somerset Place besides the Strand and after the thing by them objected to him and by him confessed to be done accordingly, excusing nevertheless the fact for that as he said the same stood with the word of God, his first wife being proved an adulteress; when many words and arguments had been controverted on behalfs of their Grace and Lordships and of the same Marquis, they commanded him to retire himself apart (as he did) and then weighing among themselves the importance of the case to be such as being either permitted or winked at might breed manifold disorders and inconveniences within the realm; it was by them ordered and accorded that the said Marquis and Mistress Elizabeth should from henceforth be sequestered and dwell apart in sort as the one should not resort to the other, she to remain and sojourn with the Queen's Grace [Katherine Parr, Northampton's sister] until the case should be at full heard and tried whether the same were consonant with the word of God or no; whereupon such further order should then be taken as should be convenient." (Acts of P.C., 1547-50, p. 164. Burnet's Hist. Ref., Part II, Book I, p. 56.)

———. —Burnet states that the Commission now hurried forward their inquiry, and acting on advice which they received from certain "learned men," to whom questions had been propounded, reported in

favour of the Marquis's marriage: and that upon this report the second wife was suffered to cohabit with the Marquis (Burnet's Hist Ref., Part II, Book I, p. 58, and Doc. No. 20). The report is not known to be extant. Burnet's authority for the questions put to the "learned men," and their answers is a collection of MSS. amongst Archbishop Cranmer's papers in Lambeth Library (Lambeth MSS. No. 1108). There is nothing definite to connect these documents with the Parr Case, though it is quite possible that they are so connected, and that Burnet's view about them is well founded. The documents consist of:

(1) A collection of quotations from the Fathers, Councils, etc., bearing on remarriage after divorce for adultery.

(2) A similar collection in another handwriting headed: "*Quod non liceat post divortium vivente priori conjuge secundas nuptias contrahere.*" Possibly this is a first draft of No. (1).

(3) Eight questions. These are general questions as to whether the marriage tie can be dissolved at all in the lifetime of the husband and wife, and, if so, for what causes. The answers to them would go far to enable the commissioners to report on the concrete question submitted to them, but they indicate a method of dealing with the matter, the very opposite to that which Parr suggested when he invited consideration to "his only particular cause" "without determination of any general cause."

(4) Answers to the eight questions of which the substance is that adultery *ipso facto* dissolves the tie of marriage, and that adultery is the sole ground on which valid Christian marriage can be dissolved. "*Ipso adulterii facto matrimonii vinculum dirimi.*" "*Ob solam causam stupri dirimitur matrimonii vinculum: cujus ipso quidem facto conjugii dissolvitur nodus et loqui-*

mur de hiis qui sacrosancti matrimonii jus agnoscunt."

(5) A paper in 19 paragraphs against the view taken in the eight answers.

(6) A paper replying to the points raised in these 19 paragraphs.

(7) A paper in five paragraphs in support of the view taken in the eight answers.

(8) A paper replying to the last-mentioned paper.

All these documents are stitched together but not in order, in fact in great disorder. The names of the writers or of the persons responsible for the questions and answers and the other documents are not given. They are completely anonymous and undated, and, as has been said, do not mention the Parr case. The documents (6) and (7) contain marginal notes in red ink and in Cranmer's handwriting. These notes are criticisms of the portions of the text against which they are written, and are undoubtedly adverse to the view that marriage can be allowed after divorce. Whatever was the occasion which called forth these documents it is clear that when Cranmer wrote his notes on them, he still adhered to the opinion of the indissolubility of marriage which he stated in his letter to Osiander in December 1540 (*see* p. 28). It is noticed by Burnet that some of the documents bear traces of the handwriting of Cranmer. (*See also* Pocock's Observations in his edition of Burnet's Hist. Ref., vol. ii, pp. 117-21.)[1]

I am not aware that any record exists of any further action of the Council as a result of the report (if any) of the Commission.

1551-2.—A statute of 5 & 6 Edw. VI is entituled "An Act touching the marriage of the Marquis of Northampton and the Lady Elizabeth." It recites that the Marquis was "at liberty by the laws of God to marry" and had done so four years previously. It is

[1] For fuller information as to, and transcripts of, these documents see App. E.

to be noted that neither the report of the Commission nor the sentence of the spiritual court for divorce *a mensa et thoro* nor the Reformatio Legum is relied on or even mentioned. After the recitals by way of preamble which have been mentioned, it is enacted that the marriage should be adjudged lawful, and the issue of it legitimate to all intents and purposes, "the s[d] former marriage betwixt the said Marquis and Anne or any decretal canon constitution ecclesiastical law common law statute usage prescription or custom of this realm to the contrary in anywise notwithstanding." (B.M. Miscellaneous, No. 806 K., 15 (8).) Thus the remarriage was validated by an exercise of the overriding power of Parliament, founded on the legislature's views of the effect of the laws of God, without any reliance on the law and practice of the Church courts and indeed in express disregard of them.

1553.—This Act was repealed by 1 Mary, Sess. 2, ch. 33 [40] (*see* Statutes of the Realm). Parr survived Elizabeth Brook, and after marrying again, died without issue in 1571. His title became extinct, and his property passed to a nephew. Having regard to the allegation which has been made that the Reformatio Legum was in fact adopted in practice during the latter half of the sixteenth century, it is well to note the differences between the opinions apparently acted on in the Northampton case and the Reformatio Legum. In the former, especially if we believe Burnet's account of the Cranmer MSS., it was laid down that adultery *ipso facto* dissolves the tie of marriage and that adultery is the only ground of divorce *a vinculo*. In the Reformatio (caps. 5, 1, 17) it is made clear that a dissolution cannot be effected but by the action of a court. Further the Reformatio allows divorce on many other grounds besides that of adultery. The Northampton case may justly be cited as evidence that in Edward VI's reign there was strong support, amongst leading Churchmen, for the view that adultery furnished a valid ground for the complete dissolution of

marriage so that at least the innocent party could remarry: and further that this view was adopted, at that date, by Parliament. But the case not only does not help, it goes far to refute, the contention that the Ecclesiastical Courts, or the Church of England of which those courts are the judicial executive, endorsed and acted on the opinions thus professed by important individuals and by Parliament. Still less does the Northampton case furnish any justification for the assertion that the Reformatio Legum was ever in actual operation in England.

IX

THE CANONS OF 1603

While the Ecclesiastical Courts administer the laws of the Church of England, the Church, acting through her Convocations, with the licence and assent of the Crown, can make new laws or canons, by which changes in the ecclesiastical law, binding on the clergy in their official capacity, are effected. As this is the only constitutional way in which the Church of England can legislate for herself, canons are rightly regarded as a most important expression of the "mind of the Church" on any matter. It is desirable, however, to add that the canons of 1603-4 are not themselves standards of Church teaching, like the Thirty-nine Articles. With rare exceptions they are merely disciplinary by-laws designed to enforce the observance of laws, some ecclesiastical and others civil, which exist independently of the canons and for the breach of which the canons provide a penalty.

It has already been pointed out that no canon dealing with divorce was enacted subsequently to the breach with Rome, until 1597, when certain canons were made which were subsequently embodied in the general collection of constitutions and canons of 1603-4

which is still in force. The canons of 1597 were issued in Latin only, but those of 1603-4 were contemporaneously published in Latin[1] and in English. The 6th canon of 1597 entitled "De sententiis divortii non temere ferendis" is substantially similar to, though not identical with, the 105th, 106th, 107th, and 108th of 1603-4 in their Latin form, and we may confine our attention to the latter. The 105th canon entitled "Pro conjugio dirimendo nuda partium confessio non audienda" begins as follows:

Quoniam matrimoniales causae inter graviores semper habitae fuerint et propterea majorem cautelam desiderent; siquando in judiciis veniant disceptandae, praesertim cum matrimonium in ecclesiâ debite solemnizatum, quovis nomine *separari*, *vel nullum pronunciari* postulatur; strictè mandamus et praecipimus ut in *omnibus divortiorum et nullitatis matrimonii* processibus circumspectè et deliberate procedatur, &c.

The English version of the above is as follows:

Forasmuch as matrimonial causes have been always reckoned and reputed among the weightiest, and therefore require the greater caution, when they come to be handled and debated in judgment, especially in causes wherein matrimony, having been in the church duly solemnized, is required, upon any suggestion or pretext whatsoever, to be *dissolved or annulled*: we do straitly charge and enjoin, that in all proceedings to *divorce and nullities of matrimony*, good circumspection and advice be used, &c.

The 106th canon, entitled "Sententiae divortii et separationis non nisi pro tribunali ferendae," begins as follows:

Nullae inposterum sententiae vel separationis a thoro et mensa, vel nullitatis matrimonii praetensi ferantur, nisi publice, &c.

The English version (title) "No sentence for Divorce to be given but in open Court," runs thus:

No sentence shall be given either for separation a thoro et mensa, or for annulling of pretended matrimony, but in open Court, &c.

[1] Constitutiones sive Canones Ecclesiastici, London, 1604, printed by Norton the King's printer for Latin books. A copy which belonged to Abp. Bancroft himself is in Lambeth Library (96. G. 18).

The 107th canon, entitled "Separatis, eorum altero superstite, nova copula interdicta," is as follows:

In sententiis, quando ad separationem thori et mensae tantum interponuntur, monitio, et prohibitio in ipso contextu sententiae latae fiet, ut a partibus abinvicem dissociatis caste vivatur, nec ad alias nuptias, alterutra vivente, convoletur. Denique quo postremum illud firmius observetur, sententia separationis non ante pronunciabitur, quam qui eam postulabunt, idoneam cautionem interposuerint, se contra dictam monitionem et prohibitionem nihil commissuros.

The English version (title) "In all Sentences for Divorce, Bond to be taken for not marrying during each other's life" is as follows:

In all sentences pronounced only for divorce and separation a thoro et mensa, there shall be a caution and restraint inserted in the act of the s^d^ sentence, That the parties so separated shall live chastely and continently; neither shall they, during each other's life, contract matrimony with any other person. And, for the better observation of this last clause, the said sentence of divorce shall not be pronounced, until the party or parties requiring the same have given good and sufficient caution and security into the court, that they will not any way break or transgress the said restraint or prohibition.

The 108th canon is immaterial for the present purpose.

Now the importance of these canons for the purpose of ascertaining whether the Church of England recognized in 1604 divorce *a vinculo*, with its consequence of possible remarriage, is crucial. If divorce *a vinculo matrimonii debite solemnizati* was then recognized, these canons, containing rules to be applied to all divorce suits, must have dealt with it. If they do not, it can only be because the Church courts had no jurisdiction to grant divorce *a vinculo*, and therefore no rules needed to be made or could be made about it. But when the canons are read, as they should be, in Latin as well as English, it becomes clear that the canons deal only with divorces *a mensa et thoro* and cases of nullity of marriage, and not with divorce *a*

vinculo. The Latin form of the 105th canon, although in the English version it is made to cover marriages "dissolved" as well as marriages "annulled," shows that these words are intended to be equivalent to "separari vel nullum pronunciari," which can only describe separations from bed and board and nullities. It should, however, be mentioned that the report of the Royal Commission on Divorce, 1853 (p. 8), quoting the English version of this canon (cited by mistake as the 105th canon of 1597), and ignoring the Latin, relies on it as strong proof that "marriage was not held by the Church and therefore was not held by the Law to be indissoluble."

Again, the 106th canon is in terms confined to cases of separation and nullity. There is therefore no provision for cases of divorce *a vinculo* being heard in open court. Assume this jurisdiction existed and the canon becomes absurd by making provision for the less grave cases and not for the more grave ones.

Finally the 107th canon is, both by its terms and by the subject matter of it, confined to separations from bed and board. It appears that none of these canons refer to divorce *a vinculo*, for which, therefore, no provision at all has been made, a state of things only consistent with divorce *a vinculo* having no place in the law of the Church of England.

Another argument has been raised on the 107th canon, which it will be remembered requires a bond to be given by a party applying for a separation from bed and board. This bond was for £100, which the party bound himself to pay to the judge of the court if the condition of the bond was broken. The condition was as follows:

> If therefore the s^d^ A. B. shall not at any time hereafter intermarry with any other person during the life time of the s^d^ E. F. then this obligation to be void or else to remain in full force and virtue (Coote's Ecclesiastical Practice, p. 344).

It is said that

> the very fact of enjoining a prohibitory bond implies that the

marriage which the bond was intended to prevent would have been valid (Report Divorce Com., 1853, p. 8).

I think it must have been overlooked that a similar "caution and security" is required by the 101st canon to guard against impediments of marriage of all sorts (*e.g.*, the nearest relationship) being disregarded.

But I venture to think a consideration of the nature of the sentence of separation *a mensa et thoro* makes this inference I have quoted from the Report of the Divorce Commission, 1853, impossible. The 107th canon deals only with such separations, and as a matter of fact the form of sentence in these cases contained a clause expressly making the separation terminable on reconciliation, "donec et quousque mutuo eorum consensu sese duxerint reconciliandos." Fayrfax *v.* Fayrfax. Delegates, 1543 (see Appendix B). "Until they do better agree," 1566, Hale's Precedents, No. ccccxli, p. 148. "Donec et quousque Deo sic juvante et disponente contigerit eos in debitam gratiam redire et se invicem maritali affectione tractare et amplecti," 1666, Neave *v.* Neave. Arches Sentences, 1664-6, No. 96.[1] "Until they shall be reconciled to each other," 1846, Coote's Ecclesiastical Practice, p. 347. (*See also* Clarke's Praxis, Tit. cxiii.) That a sentence, which purported to suspend cohabitation until reconciliation, could not have had the effect of rendering a fresh marriage, in the meantime, "valid," is a proposition which does not seem to require elaborate argument. But the express caution to the parties not to attempt remarriage, and the bond exacting a penalty for disregard of the caution were, we may readily believe, quite necessary to guard against persons, who had been divorced *a mensa et thoro*, persuading others to go through some form of marriage with them, under cover of the sentence of separation. There was every facility for wrong doing of this kind, because irregular marriages without banns or licence, and even,

[1] See a copy of this sentence, App. F.

probably, marriages by *verba de presenti*, without any officiating clergyman or religious ceremony, were recognized in the then state of the law. But the well-known instance of Laud's being induced as a young man and to his life-long regret, to marry his patron Blount, Earl of Devonshire, to the separated (*a mensa et thoro*) wife of Lord Rich[1] shows that the danger to be provided against was by no means confined to ignorant persons and irregular marriages. It was also aggravated by the possibility that people, in their eagerness to remarry, would avail themselves of the theory apparently acted on in the Northampton case and claim that the unfaithfulness of a partner had *ipso facto* released them from the bond of a former marriage. Moreover, it must be borne in mind that the anomalous condition of the ecclesiastical law rendered it additionally important to take every practicable means to prevent illegal unions from being formed. Once formed under the guise of a ceremony of marriage, the most lawless and even disgusting connection (*e.g.*, between brother and sister) needed a suit for its effective annulment. This was required not to *make* such a marriage void, for it was void *ab initio*, but, in order that its invalidity might be *acted on*, it was necessary that there should be a sentence *declaring* it void. A suit for this purpose could only be brought in the lifetime of both the parties to the so-

[1] This case is instructive from another point of view. It shows that remarriage after divorce was not regarded at the beginning of the seventeenth century with easy tolerance. The marriage was in 1605. According to Heylin (Life of Laud, pp. 53, 54)—"The Earl found presently such an alteration in the King's countenance towards him and such a lessening of the value which formally had been set upon him that he was put to a necessity of writing an apology to defend his action. But finding how little it edified both in Court and country, it wrought such a sad impression on him that he did not much survive the mischief, ending his life before the end of the year next following." It ought, however, to be added that Lady Rich was the guilty party and the Earl her seducer. On his death the authorities decided that, as Lady Rich was not the Earl's lawful wife, her arms could not be impaled with his for the purpose of his funeral pageant. (Baildon's Cases in Star Chamber [1593-1609], p. 444.)

called marriage, and in the absence of a suit, incestuous unions might pass uncondemned and the children of them be treated as legitimate. It is hardly surprising that this very regrettable state of things has been sometimes mistaken for acquiescence by the law in the irregularities which it failed adequately to suppress. There is, however, no more reason for saying that remarriages after separation were regarded as valid, because they were not always effectively annulled, than there would be for making the same claim with regard to incestuous unions between near relatives. The essential invalidity in such cases is not dependent upon or affected by the presence or absence of a judicial sentence. (*See* Fenton *v.* Livingstone, 3 Macqueen's reports, 497, in the House of Lords.)

X

THE BIGAMY ACT

A SOMEWHAT similar argument has been advanced, founded on the Bigamy Act (1 Jas. I, ch. 11). Under this Act death was made the penalty for bigamy, which was declared to be a felony. Certain exceptions were however made and amongst them was a proviso:

> That this Act nor anything therein contained shall extend to any person or persons that are or shall be at the time of such marriage divorced by any sentence had or hereafter to be had in the ecclesiastical court or to any person or persons where the former marriage has been or hereafter shall be by sentence in the Ecclesiastical Court declared to be void, &c.

On this it is said:

> Now we can hardly suppose that the Legislature intended to declare in one and the same breath that bigamy was felony and yet that a second marriage after divorce, living the first wife, was not to be considered in that light, unless it conceived that the sentence passed in the Ecclesiastical Court had worked a dissolution of the marriage contract. (Report of Divorce Commission, 1853, p. 9.)

Again, the inference is by no means necessary. Bigamy was already punishable like other forms of immorality in the Ecclesiastical Courts. But the effect of the Act was to make it a capital crime, and it was surely not unreasonable for Parliament, without acknowledging the validity of attempted remarriages after separation by sentence, to recognize a moral difference between them and ordinary bigamy and to provide that such unions, then certainly existing in influential quarters, and perhaps more common in the higher than in the humbler class, should not be visited with the extreme penalty of death. That this is substantially what was meant we learn from Coke, who was Attorney-General at the time and probably closely connected with the preparation and passage through Parliament of this Bill. In his 3rd Institute, cap. xxvii, he comments on this Act, and with reference to this proviso, says:

> There be two kinds of divorces the one that dissolveth the marriage a vinculo matrimonii as for precontract, consanguinity &c. and the other a mensa et thoro as for adultery, because that divorce by reason of adultery cannot dissolve the marriage a vinculo matrimonii for that the offence is after the just and lawful marriage. This branch in respect of the generality of the words, privilege the offender from being a felon, as well in the case of the divorce a mensa et thoro as where it is a vinculo matrimonii and yet in the case of the divorce a mensa et thoro, the second marriage is void, living the former wife or husband. And if there be a divorce a vinculo matrimonii and the adverse party appeal, which is a continuance of the former marriage, and suspend the sentence, yet after such a divorce the party marrying is no felon within this statute, in respect of the generality of this branch, although the marriage be not lawful.

In Porter's Case, 1637, Cro. Chas. 461, the judges on a prosecution under the Act doubted (but see Hale's Pleas of the Crown, i, 693, and Middleton's Case, Sir J. Kelyng's Rep., p. 27, an. 1638), whether a marriage after a sentence *a mensa*, etc., for cruelty was really within the exception of the Act, but it is stated in the report that judges and counsel and "all the civilians and

others" agreed that the former connection continued and the second marriage was unlawful. In another case (1641), reported in March's Reports, p. 101, one Williams who had married after having divorced his first wife for adultery was held to be within the exception. One of the judges is reported to have said that while divorce for cruelty was only *a cohabitatione*, divorce for adultery was *a vinculo matrimonii*; also that remarriage was allowed in the latter case "by the law of Holy Church," but not without licence! These are, of course, mistakes of fact, for which probably the reporter is responsible. (*See* Baron and Feme, 1738, p. 442.)

While however the attempt to infer from the Bigamy Act that the validity of marriage after divorce was recognized by Parliament seems unwarranted, the Act by the width of the exception certainly suggests both that the number or influence of those who had remarried after divorce was considerable, and also that public opinion was not disposed to treat such persons as mere criminals. It seems to me a further illustration of what has been already noticed in another context, namely, the prevalence of a looser practice in the society of the time than the law either of the Church or of the realm endorsed. Although it belongs to a period (1553) fifty years before the Bigamy Act, the following passage from Strype's Memorials, Book II, chap. xxiii, p. 443, is worth perusal for its reference to the actual condition of the people.

> The nation now became scandalous also for the frequency of divorces; especially among the richer sort. Men would be divorced from their wives with whom they had lived many years, and by whom they had children, that they might satisfy their lusts with other women, whom they began to like better than their present wives. That which gave occasion also to these divorces was, the covetousness of the nobility and gentry, who used often to marry their children when they were young boys and girls; that they might join land to land, possession to possession, neither learning, nor virtuous education, nor suitableness of tempers and dispositions regarded: and so, when the

married persons came afterwards to be grown up, they disliked many times each other, and then separation and divorce and matching to others that better liked them, followed; to the breach of espousals and the displeasure of God. These divorces and whoredoms (a great cause of them) had especially stained the last reign, [Henry VIII] and introduced themselves into this; . . .

XI

CONCLUSION

I THINK, therefore, the answer to the question whether the Reformatio Legum was acted on in matrimonial causes during the latter half of the sixteenth century must be in the negative. I confess I should have supposed that a mere recital of the regulations and penalties laid down in the Reformatio with regard to this subject (*see* p. 22) would be enough to convince anyone that it never was and never could have been a practical, working code. There is not so far as I know, either in judicial records or in history, any trace of its ever having been acted on. But further, I venture to think that the fair result of an examination of the materials collected in these pages is that the law of the Church of England as to the indissolubility of marriage and the corresponding practice of the Church courts, remained unchanged throughout the period under notice, that is, from before the Reformation until after the present canons of 1603-4 came into operation. The leading writers on ecclesiastical practice, the records of the Ecclesiastical Courts so far as we can consult them, the inquiries contained in Visitation Articles, the negative evidence of parish registers, the references to the subject in civil proceedings, the writings of public men of the day like Coke and Andrewes, the canons of 1603-4, and last but not least the intervention of Parliament in order to dissolve a marriage, when that was really intended, all agree and all point to the conclusion I have stated. Side by side with this adherence

to the old standards of law and practice there was, as has already been said, a widespread relaxation of opinion with regard to divorce, a change which was largely confined to an admission of the right "according to God's law" of a man, who had divorced his wife for adultery, to remarry. But there would also appear to have been a general slipping away from old convictions which probably produced amongst all classes vaguely revolutionary notions as to the nature and permanence of the marriage tie, notions which in that licentious and unsettled age men were not slow to put in practice.

PART II

THE CASE OF SIR JOHN AND LADY STAWELL

THE STAWELL CASE

In 1910 Colonel Stawell published his History of the Stawell Family,[1] and therein he gave a short statement of the facts of this case. Until then, so far as I am aware, it had escaped attention, but coming as it did when the public mind was being turned to the question of Divorce, the statement naturally aroused considerable interest. Colonel Stawell tells us[2] that Sir John Stawell, then Mr. Stawell, married Mary, daughter of Sir William Portman, on 26th January 1556,[3] that she "was proved to have been guilty of adultery and was divorced," that the Bishop of Bath and Wells wrote to the Archbishop of Canterbury on the 3rd April 1572 a letter, which is printed in full, commending to the latter Stawell's "sute that he might marrye notwithstanding that shee that was his former wife is yet livinge," that the Archbishop granted his licence for the marriage of John Stawell of Cothelstone, Esq^re^., and Frances Dyer, virgin, and that the licence, which is not printed, bore date the 26th April 1572. These are the material facts as given by Colonel Stawell. They are taken from the Brown MSS. in Taunton Castle.

This simple statement is obviously insufficient to satisfy historical curiosity. We are not told what was the form of the sentence of divorce, or by what author-

[1] "A Quantock Family. The Stawells of Cothelstone and their descendants the Barons Stawell of Somerton and the Stawells of Devonshire and the County Cork," compiled and edited by Colonel George Dodsworth Stawell, late Director of Military Education in India.

[2] Pp. 76 and 77.

[3] Quoting the entry of the marriage in the Orchard Portman register. The inq. p. mortem of Sir John Stawell gives the 23rd November 1556 as the date.

ity it was pronounced; whether it was in the usual form *mensa et thoro* or whether it was *a vinculo* on the ground of adultery. The *Reformatio Legum*, though never enacted, purported to authorize full divorce in such a case, and there are some,[1] possibly misled by the report of the Divorce Commission of 1853, who consider that although not enacted, the *Reformatio Legum* was in fact acted upon in the early days of Elizabeth as though it were actual law. Was this a case in point? Clearly a careful examination of all the facts, so far as they can be ascertained, is necessary. Fortunately careful search has shown that nearly all the documents of importance for our present purpose are in existence.

Sir John Stawell was the head of an old family, the owner of considerable estates in Somerset, Dorset, and Devon, and a man of considerable importance and influence in the West. His marriage with Mary Portman was unhappy by reason of her infidelity. We can read the history of the years from 1558 onwards in the record of the divorce proceedings. On the 26th May 6 Eliz. (1564) the Queen issued her commission under the great seal to Henry Harvey,[2] David Lewis,[3] John Kenall, and William Mowse,[4] Doctors of Law, as Delegates to hear and determine the cause of divorce then

[1] Of these the reviewer in the Athenæum (27th May 1911) of Colonel Stawell's book seems to be one. He refers to Lord Northampton's case as having decided that a valid marriage was possible after a divorce *mensa et thoro*. But Lord Northampton's case did not so decide. Resort had to be to an Act of Parliament to validate the marriage, as Sir Lewis Dibdin has shown.

[2] Henry Harvey, LL.D., had been Vicar-General of London and of the province of Canterbury in the time of Queen Mary. Under Elizabeth he became Master of Trinity Hall, Cambridge, on the deprivation of Dr. Mowse (Dict. Nat. Biog.).

[3] David Lewis, D.C.L., Fellow of All Souls, Oxford, was made Judge of the Court of Admiralty in 1558 (*ibid.*).

[4] William Mowse, LL.D., at one time Master of Trinity Hall, Cambridge, was appointed Regius Professor of Civil Law at Oxford in 1554. In 1559 he was constituted Vicar-General and official of the Archbishop of Canterbury, Dean of the Arches, and Judge of the Court of Audience (*ibid.*).

pending between Stawell and his wife. From this commission, which is set out in the exemplification of the sentence,[1] we gather that the cause was brought in the Consistory Court of Wells, but that by reason of delay and alleged obstruction it was removed to the Provincial Court of the Archbishop. There again there seems to have been delay, although it is alleged that Drs. Lewis and Mowse, to whom the Archbishop had referred the cause in his Court of Audience, were prepared to proceed. The Queen was petitioned to interfere, and in consequence the cause was referred by her to the four delegates, or any three or two of them, to decree what was just and right "summarily, plainly and without ado." On the 22nd October 1565 the delegates sat in St. Paul's Church in London and pronounced sentence. They found the libel proved and decreed that Stawell and his wife "ought to be divorced and separated the one from the other from bed and board and mutual cohabitation and the paying of conjugal respects from thenceforth on account of the adultery set out in the libel and perpetrated by the same Mary and proved in the cause." The exemplification, or letters-testimonial as it is styled, is of general as well as particular interest, for it is understood that official copies of sentences of the Court of Delegates before 1585 are scarce and difficult to find. It is therefore printed in full in the Appendix. It will be observed that nothing is said about reconciliation of the parties, and that, unlike sentences of later date in the Church Courts, it exacts no security against remarriage of a party during the lifetime of the other.

We now pass on to perhaps the most important period in the history of this case. In 1572 Stawell was desirous to marry Frances Dyer, his divorced wife being still alive. Frances was one of the daughters of Sir Thomas Dyer, who lived at Sharpham Park, near Glastonbury, and died in 1565. She was sister to Edward Dyer the courtier and poet, one of "the two

[1] App. AA.

very diamondes of her maiesties Courte for many speciall and rare qualities." So Gabriel Harvey wrote to Spenser.[1] Sidney was the other "diamond." In 1571 Dyer was at Elizabeth's court under the patronage of the Earl of Leicester, over whom he seems to have exercised much influence.[2] Indeed in what follows here we see Leicester's hand very plainly. Burghley also seems to have taken Dyer into his favour, for it is said that Leicester, with the connivance of Burghley, intrigued to make Dyer the Queen's personal favourite in the place of Hatton.[3] Dyer is always described as of Weston in Somerset. There are several Westons in that county, but there can be no doubt, I think, that Dyer's "manor of Weston" was Weston Zoyland, and his abode there was most probably the old house still standing opposite to the church.

In furtherance of his proposed marriage Stawell sought the help of Gilbert Berkeley, the Bishop of Bath and Wells. On the 3rd April 1572 the latter wrote to Parker, the Archbishop of Canterbury, the letter which is printed in the Appendix.[4] It does not differ materially from the print in Colonel Stawell's book[5] copied from the Brown MSS., p. 246. Brown gives no reference to his authority for the transcript, but it is more than probable that he saw the document now amongst the records of the Court of Wards in the Public Record Office, and from which the transcript here printed is taken. But it seems to be clear that the document is not the letter that was actually sent to the Archbishop. I take it to be a copy sent by the Bishop of Bath and Wells to Stawell, for it has upon it the draft of a letter written by the latter to some person on electioneering business. It bears the impression of the Bishop's private seal—the arms of Berkeley. This and the other documents doubtless came into the custody of the court during the wardship of Stawell's grandson. The point

[1] Three proper and Wittie Familiar Letters.
[2] Dict. Nat. Biog. (Sir Edward Dyer).
[3] *Ibid.*
[4] App. BB.
[5] P. 76.

of the letter seems to be this. Stawell admitted to the Bishop that the "common lawes and the lawes of the Realme" were against him but that he had been advised by the best learned in Oxford that under the circumstances it was lawful "by God's lawe" for him to marry again or "take his remedie" as the Bishop puts it. Stawell besought the Bishop to grant him licence to marry. The latter refused—"I answered him it was above my reache. Your Grace can better hereof consider then I am able to expresse." The Archbishop did thereof consider, and on the 26th April 1572 he granted his licence. It is printed in the Appendix.[1] I postpone for the present such remarks as I have to make upon it. Though formally drawn, sealed, and issued, the licence was never entered upon the records of the Faculty Office.

I have not been able to discover where the second marriage took place. Very probably it was solemnized in London. But that John Stawell and Frances Dyer were in fact married there can be no doubt. Frances is described as the wife of Stawell upon the inquisition post mortem of his son,[2] and also in the various deeds for resettlement of the estates, and even by Mary Portman herself in her petition to the Court of Wards. Frances died in the lifetime of her husband, on the 10th March 1600.

Stawell and his new wife had not long to wait before the storm burst. Before November 1572 Mary Portman, the divorced wife, sued Stawell in the Court of Arches for restitution. Contemporaneously he was charged in the Archbishop's Court of Audience[3] for "the public offence given by him to the country where he dwelleth for cohabiting with a gentlewoman as his wife, his former wife being alive,"[4] and it would seem

[1] App. CC. [2] Chy. Inq. p. m., vol. 283, no. 87.

[3] Before the Archbishop sitting with the Dean of Westminster, Yale, Hammond, and Wendesly, civilians (Strype, vol. ii, p. 160).

[4] Parker Corresp., Parker to Lords Burghley and Leicester, 7th November 1572, P.S., p. 406.

that the first to inform the Archbishop in this matter was the Bishop of Bath and Wells.[1] All that we know of these proceedings is to be gleaned from the few letters passing between Parker and Lords Burghley and Leicester, which are printed in the Correspondence of Parker, and the account given by Strype,[2] which is obviously derived from the same source. There are no records in existence, so far as is known, of these courts for this time.

On the 7th November 1572 Parker wrote to Lord Burghley and the Earl of Leicester. It is plain that the Archbishop had received letters from them on behalf of Stawell, letters written in a protesting spirit, for Parker wrote at the same time another letter to Burghley in further justification of his action in the matter.[3] It seems that Stawell had refused to answer in both tribunals the question put to him whether he were married or not, until articles in writing were delivered to him and he had time to consider. It was contended on his behalf that to answer the question might prejudice him in the Court of Audience.[4] For his refusal the Archbishop had committed him to prison, and hence the wrath of the Earl of Leicester. Parker tried to conciliate Leicester while preserving his own independence, but with little success. The last we hear of the proceedings is that the Archbishop "deferred" the proceedings in the Court of Audience and gave instructions to the Dean of the Arches to adopt the like course in that court. It is very probable that nothing more was done in either court, for we find that on the 23rd November 1572 Henry Portman entered into a covenant with Edward Dyer, in consideration of £600, of which the latter had paid part and undertaken to pay the rest to Portman, that if Mary, the latter's sister, or anyone on her behalf,

[1] Parker Corresp., Parker to Burghley, 13th November 1572, p. 408.
[2] Life of Parker, vol. ii, pp. 160-3.
[3] Parker Corresp., p. 447.
[4] *Ibid.* Letters to Burghley of 7th November and 13th November 1572, P.S., pp. 406 and 408.

should commence a suit in the Ecclesiastical Court against Stawell to be restored to him he, Portman, would repay the £600 to Dyer.[1] On the 12th December 1572 Dyer covenanted with Stawell that if such proceedings were taken by Mary he would pay the £600 to Stawell.

For the rest of Stawell's life, so far as we know, Mary kept quiet and Sir John was left in peace with Frances. But he was clearly alive to his position. A son had been born to him. If on his, Sir John's, death the family estates stood to devolve upon his son merely by descent, the question would immediately arise whether they would not escheat to the Crown and other overlords by reason of the illegitimacy of the son and heir, the child of Frances. To remove this risk the whole of the estates were resettled so that they should devolve upon Sir John's successor "by purchase" and not by descent. The details of this transaction are given at great length and with much care in the returns to the inquisitions post mortem taken after the deaths of the father and the son.[2] They are also summarized in the petition of Mary Portman for her dower, which is here printed.[3]

Sir John Stawell died on the 3rd May 1603 leaving his son who had been created a Knight of the Bath on the coronation of James I. The son entered into possession of the estates and died on the 21st or 24th January $160\frac{3}{4}$,[4] leaving a son and heir then aged three years and some months, destined as a third Sir John to take a conspicuous position on the King's side in the Civil War. The usual inquisition post mortem was taken after the death of Sir John the son. It was taken at Yeovil on the 12th April 1604, but the like inquisi-

[1] App. DD.

[2] Chy. Inq. p. m., vol. 283, no. 87 (the son); vol. 290, no. 111 (the father).

[3] App. EE.

[4] The return to his inquisition post mortem (Chy. Inq. p. m., vol. 283, no. 87) gives the 24th as the date of his death; under his father's inquisition the date is given as the 21st in one place and the 24th in another (Chy. Inq. p. m., ser. ii, vol. 290, no. 111).

tion following the death of Sir John the father was not held until the 17th August 1605. In the return made upon the former we are told that Frances, late wife of John Stawell the father, died in the lifetime of her husband on the 10th March 1600, and there is no reference to his marriage with Mary Portman. The return made upon the father's inquisition makes no mention of his marriage with Frances Dyer, but does state that on the 23rd November 1556 he married Mary Portman, and that she was then, at the date of the inquisition, living at Orchard.

This seems to be the explanation. When the inquisition following the death of Sir John Stawell the son was held at Yeovil on the 12th April 1604, Mary Portman was represented and put in a claim for the recognition of her marriage with the father, and for the establishment of her right to dower. This claim, it seems, was successfully resisted.[1] Accordingly on the 9th June 1604 she presented a petition to the Court of Wards, which then had control by reason of the minority of the infant owner, praying that an inquisition might be ordered in respect of Sir John Stawell the father. This was conceded and the inquisition was held at Taunton on the 17th August 1605. Upon this Mary Portman obtained the recognition of her marriage which she desired. Later on she obtained an assignment of her dower by order of the Court of Wards.[2] The Court of Common Pleas had also adjudged, on her application, "that the wife who is divorced causa adulterii, shall have her dower."[3]

These are all the material facts so far as I have been able to discover. Let us see what deduction it may be possible to draw from them. We may pass over the proceedings for divorce. They proceeded upon Church

[1] See the Petition of Mary Portman to the Master of the Court of Wards printed in Appendix E E.

[2] Court of Wards, Misc. Books, vol. 110, fo. 97*d* and fo. 177.

[3] Godbolt's Reports, No. 182, p. 145 (The Lady Stawell's Case). See also Park on "Dower," pp. 19, 20.

principles, if the actual form was to some extent novel. What then was the position of Stawell? He not unnaturally wished to marry again, and he also naturally turned to his Bishop to help him. The Bishop knew the law and did not see his way, but he could at least bring the matter before the Archbishop with all the support that personal knowledge of the suppliant could enable him to give. Unquestionably this was to place Parker in a difficult position, and here we may speculate —and it can only be speculation—as to what passed through the Archbishop's mind. It cannot be doubted that he was perfectly familiar with the law. He knew that the law administered by the Church courts forbade remarriage by a divorced though innocent party during the lifetime of the other party. He had been a member of the Commission which formed the *Reformatio Legum* with the object of enabling that which before had not been possible, but the reforming scheme had not received the force of law. He had studied, no doubt, the various and conflicting opinions as to what was or was not the law of God in such matter. What should he do in the circumstances? Should he grant his licence in the way usual where no difficulty of the kind existed, or should he give weight to what he believed to be the Divine law and grant a qualified dispensation? He could not follow the former course. No doubt he was as much impressed by the difficulty as was the Bishop of Bath and Wells. I venture to think that he adopted the latter and that so may be explained the unusual form of the licence and the fact that it was not recorded in the usual place. Perhaps he thought that in the eye of God such marriage would not be unlawful, and provided that no one was injured in a worldly sense no harm could follow. There is nothing to show that he purported to act under the *Reformatio Legum*. Indeed, the proviso in the licence is against any such conclusion. Moreover the guilty party received her dower in accordance with the existing law and contrary to the intention laid down in the *Reformatio*. Again, in 1572 he

is seen to be active when Stawell's divorced wife instituted proceedings for the censure of the Church upon her husband for immoral life with the woman whom the Archbishop had authorized Stawell to marry.[1] It is unfortunate that we have no information beyond the Parker letters and Strype's statement as to what actually occurred in this suit. The deeds entered into by the interested parties seem to show that it was not prosecuted, and we have no real knowledge of the opinion in respect of it actually held by the Archbishop or his advisers. But it is clear beyond dispute that the persons most interested were by no means satisfied that the second marriage was really valid in law. The divorced wife made this apparent in her petition for dower. Stawell himself saw the danger and provided against it effectually, not by Act of Parliament as in the Northampton case, for there was no hereditary title to be protected, but by resettling all his estates so that his son by the second marriage, or his grandson, should take the estates as purchaser and not by descent, thereby avoiding escheat if there should be proof of illegitimacy.

Finally, Stawell, or the relatives of his second wife, evidently thought it worth while to pay a sum equivalent to some thousands of pounds of our money of today, in order to prevent an attack on her position by an assertion of the claims of the first wife notwithstanding her divorce from bed and board.

[1] Parker's Visitation Articles, so far as we know, always included an inquiry whether "any that being divorced or separated aside hath married again" (Visit. 1563, Ritual Comm. 2nd Rept., p. 404; Visit. 1569, Cardwell, Annals, i, p. 326, and Wilkins, iv, p. 257; Visit. 1575, Ritual Comm., 2nd Rept., p. 417).

APPENDICES

APPENDIX A

COMMISSION DATED 12TH FEBRUARY 1552

(Patent Roll, Chancery, 6 Edw. VI, Part 6, m. 34*d*.)

Commissio Thome Archiepiscopo Cantuariensi et aliis.

Rex Reverendissimo in Christo patri Thome eadem gratia Cantuariensi Archiepiscopo tocius Anglie primati et metropolitano Reverendoque in Christo patri ac consiliario nostro Thome Eliensi Episcopo Cancellario nostro Anglie ac Reverendis in Christo patribus Nicholao Londoniensi Episcopo Johanni Wintoniensi Episcopo Miloni Oxoniensi Episcopo Willelmo Bathensi et Wellensi Episcopo Johanni Glocestriensi Episcopo Johanni Ruffensi Episcopo necnon predilectis et fidelibus Consiliariis nostris Willelmo Petre militi Willelmo Cecill militi primariis secretariis nostris Nicholao Wotton legum doctori Decano ecclesiarum cathedralium Cantuariensis et Eboracensis dilectisque et fidelibus nostris Thome Bromeley militi Jacobo Hales militi Anthonio Cooke militi Johanni Cheke militi Ricardo Reade militi ac eciam dilectis nobis in Christo Ricardo Coxe eleemosinario nostro Willelmo Maye decano ecclesie Cathedralis Londoniensis Johanni Taylor decano ecclesie Cathedralis Lincolniensis Willelmo Cooke Ricardo Liell legum doctoribus Matheo Parker achademie Cantebrigiensis Petro Martyr Johanni Alasco Rolando Tayler de Hadley Bartholomeo Traheron sacre theologie professoribus necnon dilectis et fidelibus nostris Johanni Lucas Ricardo Goodrycke Roberto Broke recordatori Civitatis Londoniensis Johanni Gosnold Johanni Carrell et Willelmo Staunforde armigeris Salutem. Cum nobis per statutum sive actum Parliamenti in tercio regni nostri anno apud Westmonasterium factum plena potestas et auctoritas data sit triginta duos viros nominandi et assignandi quandocumque infra triennium a tempore promulgacionis dicti statuti ad perpendendumum et examinandum leges quascumque ecclesiasticas jam olim infra hoc regnum nostrum usitatas prout ex inspeccione statuti predicti quod pro hic insertum haberi volumus plenius videre licet Sciatis quod nos de solercia vestra legum sciencia et circa jussiones nostras fide plurimum confidentes nominavimus et assignavimus ac per presentes nominamus et assignamus vos triginta

duos nostros in hac parte commissarios Dantes vobis et majori parti vestrum juxta vim formam et effectum statuti predicti plenam potestatem et auctoritatem quascumque leges ecclesiasticas que pro hujus regni nostri commodo videbantur maxime expedire colligendi ordinandi et compilandi easque sic ut prefertur per vos collectas et compilatas nobis exhibendi et tradendi ut et nos post leccionem et cognitionem earundem plenissimum constitutionum nostrarum ecclesiasticarum robur eis accomod . . . ceteraque omnia et singula facere valeamus et possimus qua series statuti supradicti a nobis exigere videbitur quocirca volumus et mandamus quod statim post recepcionem presentium in locum quem ad hoc putabitis magis idoneum quemcumque una convenire curetis ac ea qua nobis placuerunt et per hanc nostram exprimuntur commissionem cum ea quam negocii hujus qualitas pacietur celeritate ad effectum deducere certoque fini tradere studiatis. Teste Rege apud Westmonasterium xij die Februarii

per ipsum Regem.

APPENDIX B

SENTENCE OF DELEGATES IN FAYRFAX *v.* FAYRFAX, 1543

(P. R. O. Delegates' Acts, I, folios 383-4)

(Trinity Term, 1543)

Domina Isabella Fayrfax contra Dominum Willelmum Fayrfax militem.

Warmyngton.

Die Sabbati nono die Junii coram venerabili viro Magistro Ricardo Gwent juris doctore in edibus suis, etc., in presentia mei Willelmi Say, etc., comparuit domina Isabella Fayrfax et ex parte regie majestatis presentavit eidem rescriptum delegatorum cujus executionem dictus venerabilis vir ad petitionem dicte domine Isabelle ob honorem regie majestatis, etc., in se acceptavit, etc., et decrevit dominum Willelmum Fayrfax militem citandum ad diem Mercurii[1] proximo in loco consistoriali inter horam secundam et quartam post meridiem ad respondendum dicte domine Isabelle in causa et causis in dictis literis specificatis. Quo facto dicta domina Isabella constituit Magistros Husey Wormington Clapam et Kydd suos procuratores conjunctim et divisim ad agendum et defendendum, etc., cum clausula substituendi et aliis,

[1] *In margin* 3° Barnabe.

etc., in generali procuratoribus, etc., juxta formam regularem, etc., et promisit mihi notarie stipulanti, etc., re ratificaturam, etc. Quo facto dicta domina Isabella expresse consenciit quod dictus dominus delegatus vigore delegacionis regie majestatis procedat ad divortium inter ipsam et dictum dominum Willelmum Fayrfax a thoro et mensa per finale suum decretum fiendum donec sese duxerit reconciliandos petiitque instanter dictum divortium accellerari [*sic*]. Presentibus omnibus premissis venerabili viro magistro Ricardo Standish juris doctore Georgio Hollond notario publico Johanne Norwood et Roberto Molyneux literatis testibus, etc. Postea vero die Martis duodecimo videlicet die dicti mensis Junii anno et loco predictis coram dicto venerabili viro Magistro Ricardo Gwent judice delegato in presentia mei Willelmi Say notarii, etc., pro tribunali sedente comparuit personaliter supranominatus Magister Robertus Warmyngton et exhibuit procuratorium suum apud actus existens pro dicta domina Isabella Fayrfax et fecit se, etc., et allegavit ad omnem juris effectum qui exinde sequi valeat. Quod dicta domina Isabella et dominus Willelmus Fayrfax ab omni contractu matrimoniali seu sponsalitico liberi et immunes et in hujusmodi libertate notorie existentes matrimonium verum purum et legitimum per verba de presenti mutuum eorum consensum huicinde exprimentes adinvicem contraxerunt. Illudque postmodum in facie ecclesie solempnizari procurarunt et obtinuerunt atque ut vir et uxor in eisdem edibus per plures annos insimul cohabitarunt obsequia conjugalia presertim carnalem copulam invicem impendentes. Atque nonnullos liberos in hujusmodi matrimonio procreatos inter se habuerunt et susceperunt. Posteaque instigante diabolo graves dissentiones rixe contentiones et discordie inter ipsos conjuges contigerunt adeo ut multocies dictus dominus Willelmus Fayrfax provocatus per verba contumeliosa dicte domine Isabelle, eandem dominam Isabellam admodum severe tractavit, trahendo eam per capillos capitis sui atque aliter verberando et aliis modis puniendo. In tantum quod ipsa domina Isabella non potest neque audet diutius in ejus consortio manere seu secum cohabitare absque metu et periculo vite sue seu membrorum suorum mutilacionis premissa preponens conjunctim et divisim. Unde facta fide petiit divortium inter ipsam et dictum dominum Willelmum a thoro et mensa auctoritate hujus tribunalis fieri et celebrari in presencia dicti domini Willelmi Fayrfax fatentis omnia et singula premissa et allegata esse vera et expresse consentientis quod hujusmodi divortium fiat et celebretur prout petitur. Et ideo dominus judex delegatus auctoritate regia sibi in hac parte commissa, eundem dominum Willelmum Fayrfax militem ex causis

predictis et mutuo eorundem domini Willelmi et domine Isabelle consensu a consortio thoroque et mensa ac mutua cohabitacione dicte domine Isabelle conjugis sue predicte, eandemque dominam Isabellam a mutua cohabitacione thoroque et mensa ejusdem domini Willelmi Fayrfax divorciavit et separavit donec et quousque mutuo eorum consensu sese duxerint reconciliandos. Et mandavit ac requisivit me Willelmum Say notarium et scribam predictum super hujusmodi suo decreto divortio et sententie prolacione instrumentum publicum conficere. Presentibus tunc ibidem Magistris Ricardo Standishe et Johanne Rukby juris doctoribus Ricardo Whalley armigero et Francisco Peyto generoso testibus ad premissa audienda videnda et testificanda adhibitis specialiter et requisitis partibusque predictis eidem sententie expresse consentientibus et eandem sententiam acceptantibus.

APPENDIX C

PETITION OF W. PARR TO EDWARD VI, 1547

(State Papers, Domestic, Edward VI, vol. ii, no. 32)

Most humblie with all lowlines in an unfained weightie cawse, besecheth your excellente Majestie your true obediente subjecte and servante William Parr, Marckquasse of Northampton, that whereas your said servante once, to the greate decaye of his prosperose fortune, married to the Ladie Anne Bowsar, for her hainowse abhomination of frequente and vile adulterie as well evidentlie knowen by her owne confession in writing and worde of mowthe and the conceavinge and bearinge of one bastarde childe, begotten by a base vile unwordie adulterer, as also upon examination and due upright inquisition proved, testified and recorded by one acte of parliament statuted onely to illegimate [*sic*] the said basterde [*sic*] and by an other solempnized perfecte judgement in the ecclesiasticall lawes for the divorse of the said Ladie Anne. It may please your highness of your abundante grace to have in ponderinge and consideration the state of your servante; firste howe conveniente and requisate it were for the honore of God to be encreased and augmented in your said servante in whom as in all other His childerne He requireth a pure and undefiled liffe, and for the succession and maintenance of the blood and name of your said servante, whereof at this presente none is in live of any proximitee, in that your said servante might have the Godlie remedye of mar-

riage, bothe to the highe pleasure of God, the tenderinge and performance whereof your servante moste busilie seketh, and to the procreation of some lawefull issue by whome your servante whilst hee livethe might have some naturall comforte of his succession. And after his dethe your Grace might have one of his name and estate to serve your highnes with like humblenesse and hartines in service. Next to this that your Majestie of your excellent gentill grace and favor will witsave to understand that the King's highnes, your moste prudente and Godlie father, worthieste of fame and memorie, partlie upon a lowlie sute made to his grace by your servante not longe before his departure, and upon his pittiefull consideracion of your servante's estate, made so unfortunate by the unsatiable aduoutrie of the said Lady, but most of all upon his highe prudente consideracion that, if she sholde againe be joyned in mariage with him, her manyfolde vile adultries alredie committed, and consequentlie the continuance therein, sholde decaye your servante's honor, whose preservation your said servante in his soveraigne lorde's servis dailie desirethe, and that her long fastrooted obstinatie, notwithstandinge sondrie her dissimulations, had alienated, altered, yea, uprooted all inclinacion of your servante's favor without th' expectacion of any motion toward her againe, was purposed, intended and graciuselye promised both for the consideracions abovesaid and diverse manie other, to depute, appointe and ordaine by his highnes' commission diverse Godlye lerned men to decide, debate and sufficiently, with charitie, determine whether your said servante, upon all and everie the circumstances of his onely particulor [*sic*] cause, the manner, state, forme, qualite, and condicion of bothe the particuler parties onlie pondered and considered, without determination of any generall cause, might without the offense of God, for th' avoydinge of unlawefull lyve, whereunto all fleshe is prone, and the procreation of childerne which he necessarelye requirithe, take to his wiffe, in the liffe of the saide Ladye th' aduowteresse, anye other ladie or gentilwoman unmaried and lefull to take husbande. And for as muche as it pleased Almightie God by the misterie of His wisdome, after the gloriose Godlye and famose actes of our soveraigne lorde and Kinge, your highnes' dere beloved father, marveloselye by fame in truthe dispersed, to call his highnes to the participacion of his eternall glorie, whearebye the intente and graciose purpose of the same Kinge in this your servante's cawse toke no further proceedinge, but onlye to will and minde the remedie of your servante, the knowledge whereof remainethe in sondre honorable and moste faithfull cownsellors and personages nowe of your grace's honor-

able counsell, your said moste humble servante further suppliethe and besechethe your excellente grace, in the consideracion of all the premisses and for th' accomplishinge of your dere, wordie, beloved father Kinge Henrye th' eighte's gracius zeale, purpose and erneste intente towards this your servante's cawse, that in like wise your grace will, as in honor and royall dignitie, succede your highenesse father, so also in charitable favor and honorable benefitting your servante, havinge greate nede of the same, and graunte your highnesse lettres of commission to siche nombre of persons lerned in the lawe and worde of God as your highnesse by advise of your honorable cownsell shall thinke meate for th' examinacion, debatinge and decidinge of this your servante's onlye one particular private cause, them therebye authorisinge, after hearing of the parties and delyberate debatinge of the whole matter, diffinitivelye to determine what the law of God will and permitteth therein, and the same to certifie your highnes in such wise as your Majestie, followinge the trew pathe and example of your moste noble father, allowid by the whole wisdome, fame and consente of all Christendome, may provide for your moste humble subjecte and servante soche resonable redresse and Godlye remedie as the will of God, declared by His most holie worde, requirethe, of Whome your highnes shall undoubtedly receyve eternall rewarde, for the which and long preservacion of your highnesse in His favor and servis emongst us, your moste humble and naturall subjects, your servante shall never cesse to praye.

[*Endorsed*]

A supplicacion of my Lord
Marquies of Northampton
1543[1] [*sic*]
For a commission to be graunted
to learned men to resolve whether he might lawfully marry an
other wife, his other wife living who was divorsed from him.

[1] Not contemporary.

APPENDIX D

COMMISSION DATED 19 APRIL 1547

(Patent Roll, 1 Edward VI, Part 4, m. 23 [27]*d*)

19 April 1 Edward VI [A.D. 1547]

Commissio pro Rege

EDWARDUS SEXTUS, etc., perdilectis ac fidelibus reverendis patribus in domino Thome Cantuariensi Archiepiscopo Cuthberto Dunolomensi et Henrico Roffensi Episcopis Willelmo Maye legum doctori Decano Sancti Pauli Londonii et Simoni Heynes sacre theologie doctori ac Decano Exoniensi Johanni Redmayne sacre theologie doctori Nicholao Rydley sacre theologie doctori, Thome Smyth legum doctori et Johanni Joseph sacre theologie baccalario, Salutem.

Cum ex certo probabilique fidedignorum virorum relato testimonio probacionibusque variis ac perspicuis cerciores absque omni dubio facti sumus quod pater noster longe praecharissima ac perpetua animi nostri commemoracione colendissimus Henricus Octavus horum nostrorum Regnorum Rex nuper defunctus non multo tempore ante decessum suum diversis justis gravibusque causis et rationibus ductus commotus et persuasus existens prout moris ejus fuerat summo bene de omnibus studio merendi affici ac teneri favorabiliter in animo suo proposuit instituit et intendebat exactam seriam et absolutam resolucionem decisionem ac determinacionem habendas per viros pios et doctos juxta verum germanum sinserum [*sic*] et purum divine legis intellectum sensum et exposicionem cujusdam cause controversie ac questionis mote exorte ac enate e divorcio nuper habito inter fidelem et praedilectum consanguineum et consiliarium nostrum Willelmum Parre Marchionem Northamptonie ex una parte et dominam Annam Bourchier antehac desponsatam praefato consanguineo nostro ex altera parte videlicet an per legem divinam ac illeso pie consciencie judicio praefatus consanguineus et consiliarius noster poterat vivente dicta domina Anna desponsare ac in uxorem legitimam ducere aliam quamvis virginem seu mulierem nubilem. Nos primum in memoria nostra (ut par est) sepius repetetentes [*sic*] ac revolventes dicti praecharissimi patris nostri ac longe sapientissimi Regis praefati memorabilem ac excellentem in zelo dei pietatem ac religionem tanta cum prudencia et rerum omnium prudenti observacione conjunctam praesertim in magnis gravibusque causis tam pie et prudenter processisse progressamque esse ut nichil aut divinius ac religiosius aut pru-

dencius ac caucius agi unquam a quoquam mortale potuisset deinde ad pium exemplum dicti praecharissimi ac prudentissimi patris nostri naturali desiderio amore ac studio intime affecti tanquam ex dicto patre nostro in nos naturali ductu propagato ad eatenus auxiliandam sublevandam ac adjuvandam causam dicti consanguinei et consiliarii nostri nobis manifeste expositam et declaratam quatenus lex divina sacrosanctumque dei verbum permittat et ferat propter certam spem et indubiam conscienciam tam per dictum patrem nostrum quam per nos de exquisita absoluta et pia doctrina prudencia et modestia que in vobis est semper conceptam expertam et approbatam per has litteras nostras patentes auctorizamus constituimus deputavimus statuimus ac ordinavimus vos novem, octo, septem aut sex quorum vos praefatos Thomam Cantuariensem Cuthbertum Dunolomensem Henricum Roffensem et Nicholaum Rydley aut duos aut tres aut quatuor esse volumus ad citandum seu convocandum coram vobis novem octo septem vel sex quorum vos praefatos (ut praedictum est) Thomam Cantuariensem Cuthbertum Dunolomensem Henricum Roffensem et Nicholaum Rydley aut duos aut tres aut quatuor esse volumus tam praefatum consanguineum et consiliarium nostrum ac dictam dominam Annam quam omnes et singulas alias personam vel personas cujuscumque status gradus sive condicionis juxta laudabilem et modestam quam in singulis vestram esse comperti sumus discrecionem et deinde ad audiendum tam praedictum consanguaneum [*sic*] et consiliarium nostrum et dictam dominam Annam qui eorum procuratores advocatos patronos explicatores scribentes et quoslibet juris divini et humani peritos ac consiliarios quos partes praedicte coram vobis adducture sint disputantes controvertentes asserentes explicantes arguentes ac quomodolibet dirimentes hanc subsequentem litigiosam questionem (scilicet) an lege divina licitum permissum ac tollerabile sit quod praedictus consanguineus et consiliarius noster (dicta domina Anna naturaliter vivente), Desponsare et in legitimo matrimonio habere possit aliam quamvis virginem sive mulierem nubilem ac post hujusmodi audicionem disputacionem controversiam decisionem explicacionem et deliberacionem praedicte integre questionis et cause singulariumque in ea questione et causa circumstanciarum interne ac externe prout vestris piis et multistiis prudentibusque animis congruum ac necessarium fore videbetur [*sic*] ad diffinitive determinandum concludendum ac judicandum utrum (ut praedictum est) lege divina licitum permissum ac tollerabile sit quod dictus consanguineus et consiliarius noster (dicta domina Anna naturaliter vivente) desponsare ac in legitimo matrimonio habere possit aliam quamvis virginem sive mulierem nubilem, et

ulterius nos de excelsa sublimique nostra regali auctoritati et praerogativa dei gratia eam donante nobis ad hoc nostrum regimen tuendum et conservandam potestatem auctoritatem licenciam et permissionem damus ac concedimus vobis omnibus et singulis vestrum ac omnibus et singulis aliis personis cujuscumque status gradus sive condicionis fuerit tantummodo in praesenciam vestram ob hanc causam praesentem dirimendam et decidendam vocatis venientibus et congregatis sive aliquibus aliis sentenciam et judicium sine aliquo scandalo in scriptis explicantibus ex una parte ad id specialiter requisitis ad proponendum arguendum testificandum verificandum approbandum dirimendum affirmandum confirmandum confutandum determinandum ac concludendum sive in aliqua sciencie assercionis et erudicionis ordinaria forma sive alio congruo et decenti modo quamcumque sive qualemcumque proposicionem sentenciam testimonium articulum textum interpretacionem argumentacionem dubitacionem sive questionem de proposito et manifeste explicandum seu referendum ad decisionem ac determinacionem praefatae questionis et cause solummodo absque aliquo dampno molestacione impeticione vexitacione [*sic*] tribulacione censura aut pene imposicione vestrum aut cujusvis vestrum aut aliarum personarum quarumcumque (ut praefertur) vocatarum ac congregatarum per nos heredes et successores nostros sive aliquem sive aliquos archiepiscoporum episcoporum justiciariorum officiariorum ministrorum aut subditorum nostrorum statuto edito in cessione [*sic*] parliamenti per prorogacionem incepti apud Westmonasterium vicesimo secundo die Januarii tricesimo quarto regni dicti praecharissimi patris nostri et ibidem continuati usque duodecimum diem Maii anno tricesimo quinto dicti regni sive aliqua alia lege acto seu actis proclamacionibus determinacionibus institucionibus injunccionibus seu doctrinis cujusvis generis promulgatis gestis factis ordinatis habitis conscriptis confirmatis sive aliquo modo in publicum emissis per praedictum praecharissimum patrem nostrum in contrarium nullo modo obstantibus. Et ulterius volumus ac mandamus vobis novem octo septem aut sex quorum ut praedictum est vos Thomam Cantuariensem Cuthbertum Dunolomensem Henricum Roffensem ac Nicholaum Rydley aut duos aut tres aut quatuor esse . . . quam citissime post absolutam plenamque determinacionem vestram in hac dicta causa et questione cuius expedit . . . simul cum congru . . . et gravi causa deliberacione plurimum cupimus certiores reddatis in scripto sigillis vestris. . . . [ju]dicium ac determinacionem vestram in hac dicta causa nosmetipsos seu praecharissimum avunculum et consiliarium nostrum E[dwardum D]ucem Somersettie regnorum nostrorum

protectorem strenuum ac persone nostre gubernatorem fidelem ceterosque praecharissimos . . . consiliarios nostros persone nostre attendentes prout sublimi celsitudini nostre placere debito modo studetis. IN CUJUS rei, etc. Teste Rege apud Grenewiche xix die Aprilis.

Per breve de privato sigillo et datum etc.

APPENDIX E[1]

CRANMER'S COLLECTIONES DE DIVORTIO

(Lambeth MS., no. 1108)

I

THE MANUSCRIPT AND ITS RELATIONS

In the Library of Lambeth Palace are two companion MSS. of considerable importance in the history of the Reformation in England. The first, MS. Lamb. 1107, bears on its cover the title 'B. Cranmer's Collections of the Lawe,' and below 'Liber 9^us.' It contains[2] *inter alia* the 'Rationale of Ceremonial,' with which are connected, as is generally admitted, the answers to certain questions in regard to the sacraments, the government of the church, etc., which form the first part of the second MS., No. 1108. The latter manuscript, with which we are more directly concerned, is called on its cover 'Sententie doctor*um* virorum Anglie de sacramentis, etc.,' and is numbered below this title 'Liber 12^us.' The two Lambeth MSS. are thus part of a larger collection of at least twelve volumes embracing probably some further series of extracts from Fathers, Councils, and theologians, etc., and documents based upon such researches.[3]

[1] Compiled by the Rev. Claude Jenkins, M.A., Librarian and Keeper of the Manuscripts of Lambeth Palace, and Chaplain to the Archbishop of Canterbury.

[2] Partly printed: 'Canon Law' in Ecc. Hist. Soc. edition of Strype's *Cranmer*, iii, Add. iii (1854)—untrustworthy; 'Rationale' in 'Alcuin Club Collections,' No. xviii (1910).

[3] A careful investigation enables the following MSS. to be identified with some degree of probability as belonging to this collection: Brit. Mus. Cotton MSS. Vesp. B v, Cleop. E. v; Royal 7 B iv, xi, xii; Arundel 151; Harl. 426. Hatfield MSS. 46 [137], 47 [238]. To these may possibly be added, though as to this the writer cannot speak from knowledge of the MSS. themselves, the following: Corpus Christi College, Cambridge MSS., cii, civ, and Record Office Eccles. Papers, 2 B 19.

The concluding section, folia 144a-181b, of MS. 1108, bears (on fol. 181b) the title 'Collectiones de Diuortio,' in the handwriting probably of Ralph Morice, Cranmer's secretary. It is clearly that which is referred to, though with some exaggeration as to its length and, as Pocock has pointed out, considerable carelessness as to the character of its contents, by Bishop Burnet in his *History of the Reformation* [ed. Pocock (Oxford, 1865), vol. ii, pp. 118 ff.]. Burnet states that he has perused it himself and quotes it, 'ex MS. D 2. Stillingfleet.'[1] How the MSS. 1107, 1108 came back to Lambeth we do not know, but the evidence of the catalogues suggests that it was between 1700 and 1763.

II

CONTENTS OF THE 'COLLECTIONES DE DIUORTIO'

In giving an account of the contents of folia 144a-181b, which are occupied by the 'Collectiones,' it will be convenient to re-arrange them according to their natural order.

A

Fol. 162a-168b. A collection of authorities headed by the original writer, 'Quod non liceat post divortium viuente priori coniuge secundas nuptias contrahere.' This collection is hastily scribbled on pages of a smaller size and make than the rest of the MS., and with a watermark of twelve or thirteen lines with the device of a shield bearing a fleur-de-lis, and charged with a label with two triangular marks. The shield is surmounted by a cross at the back of which are apparently two spears crossed, while the body of the cross itself has on either side the initials G K or G B.

The authorities cited are all in Latin and are as follows:

(1) fol. 162a. HERMES [*sc.* Hermas] pauli discipulus de man-

[1] Stillingfleet's ownership is attested by Strype [Memorials of Cranmer, Book II, chap. iv, p. 159], whose words may, however, only be an inference from Burnet, and probably also by his own reference (Stillingfleet, Irenicum, pp. 397, 400 in Collected Works, vol. ii, 1709) to "some authentick MSS.," which he proceeds to connect with Cranmer "that most worthy Prelate and glorious Martyr," that "by a hand of Providence have happily come into my hands." At Stillingfleet's death in 1699 his historical MSS. were bought by Narcissus Marsh, successively Archbishop of Dublin and Armagh, and are now in the Marsh Library at Dublin; but one Cranmer MS. at least was purchased by Robert Harley—the famous Harleian 426 in the British Museum—which contains the Reformatio Legum with Cranmer's annotations.

datis mandato quarto: 'Domine, inquit, si quis habuerit . . . vir suus peccat,' with a marginal note in a different hand that Jerome calls the book the 'Pastor,' says that it was publicly read in churches, and that ancient writers quoted it as an authority.

(2) fol. 162a. TERTULLIANUS *de Monogamia* recitans illud Matth. Qui dimiserit, etc.: 'Nam et nubere legitime . . . ne nubere quidem licebit.'

(3) fol. 162b. ORIGINES homil. 7ª in Mathæum: 'scio quosdam, inquit, qui præsunt . . . quasi alienam accipiens.'

(4) fol. 163a. CONCILIUM ARELATENSE [Arles, 314 A.D.] articulo 7°: 'De his qui coniuges . . . alias accipiant.'

(5) *Ibid.* CONCILIUM ELIBERTINUM [Elvira, 305 A.D.] art. 9°: 'Fidelis femina . . . compulerit.'

(6) *Ibid.* CONCILIUM MILEVITANUM [Milevum, 402 A.D.] cui interfuit Augustinus, art. 17°: 'Placuit ut secundum evangelicam . . . promulgari.'

(7) fol. 163b. BASILIUS MAGNUS in Ethicis definitione 73ª de coniugatis: [allows separation for adultery but not re-marriage] adductus nimirum loco illo Matthæi c. 19°. Quisquis repudiaverit, etc.

(8) *Ibid.* AMBROSIUS in commentariis ad Corynthios super illo pauli Aut viro suo reconcilietur: 'Si se continere . . . sicut mulier.' If Ambrose is speaking of human law, sicut nobis quidem videtur, that must yield to divine law; as he himself says elsewhere 'Nemo sibi blandiatur . . . mulieri non licet etc.' *Cf.* p. 111 *infra*.

(9) fol. 164a-b. HIERONYMUS super Matth. c. 19: 'Sola fornicatio . . . sub adulterio sit crimine.'

IDEM in epitaphio Fabiolae: 'Si arguitur . . . vulnus accepit.'

(10) fol. 165a-b, 166a. AUGUSTINUS *ad Pollentium* li. 1° c. 9: 'Quemadmodum ergo . . . cognoscimus'; et mox: 'Si hoc evangelista . . . fornicationis dimittit uxorem.'

ITIDEM libro 2° *ad Pollentium* c. 2 interpretans illud pauli Mulier alligata est, etc.: 'Si morte cuiuslibet . . . alligata iam non est.'

Eodem in libro ca. 15 sic addit: 'Postremo quæro . . . ipse mœchetur.'

De bono coniugali in calce septimi capitis: 'Interveniente divortio . . . quam approbatio.'

Hiis similia habet li. 19 c. 26, *contra Faustum Manichæum* et *de Sermone Domini in monte: de Consensu evangelistarum* c. 62.

(11) fol. 166b, 167a. CHRYSOSTOMUS in sermone de libello repudii exponens dictum pauli, Mulier alligata est: 'Mulier non

separetur . . . vir morietur solum'; et mox: 'Quæ autem serva . . . alioqui adulterium perpetrabunt.' Et paulo post in eodem sermone, declarans illud Deut. 24 'Polluta et abominabilis facta est' etc., ait quod secundæ nuptiæ vivente priori viro pollutio magis sit quam coniugium. In qua etiam sententia AUGUSTINUS fuit vt apparet li. 2° ad Pollentium ca. 6.

Quod autem Chrysostomus in commentariis super epistola ad Corynthios huiusmodi phrase utitur Per fornicationem iam dissolutæ sunt nuptiæ et vir quidem post fornicationem non est vir, et eum imitatus ERASMUS similes locutiones passim usurpat, vt iam vxor esse desiit quæ se miscuit alteri viro, etc., idem Erasmus in suis apologiis tum Chrysostomum tum se ipsum ad hunc modum intellexisse interpretatur: 'Sentio, inquit, eam desiisse . . . quid habet vxoris?'

Fol. 167b, 168a-b are blank.

B

Fol. 144b-161b. A series of extracts from authorities in the writing apparently of Ralph Morice with numerous additions and corrections in Cranmer's hand, and important passages underlined in red ink (represented in the text by italic type).

The extracts are arranged in the following order:

(1) fol. 144b. HERMAS Mandato iiii^to^. 'Et dixi illi . . . et in muliere.' Et dixi illi Domine, *Si quis habuerit vxorem fidelem in domino, et hanc invenerit in adulterio*, numquid peccat vir, si conuiuit cum illa? After the statement that a man ought to put away his adulterous wife, and to abide by himself, the words following, *Quod si dimiserit mulierem suam et aliam duxerit ipse mechatur* are underlined, as also (after the statement that the erring wife if penitent ought to be received again) are the words *Hic actus similis est, et in viro et in muliere.*

(2) fol. 145a-146a. ORIGENES in Math. tract. vii^mo^. 'Scio enim . . . alienam accipiens.' Those ecclesiastical authorities who allow a woman to marry again in the lifetime of her former husband do so *extra scripturam* and *contra scripturam.* But perhaps on account of the infirmity of incontinent persons *peiorum comparatione que mala sunt permiserunt* contrary to the things which have been written from the beginning. 'For I say unto you that whosoever putteth away his wife *nisi ob causam fornicationis* and marrieth another committeth adultery.' But if some audacious and judaically minded person asserts that Jesus in saying 'Whosoever shall put away his wife save for cause of fornication makes her to commit adultery' allows the putting away of a wife as Moses did, and says 'hanc ipsam esse *causam*

fornicationis per quam iuste vxor a viro dimittitur according to which Moses also enjoined the putting away of a wife if 'res turpis' is found in her: then we reply that since by the law an adulteress is stoned this is clearly not the meaning of 'res turpis.' *Post hoc autem Dominus non permittit propter aliam aliquam culpam vxorem dimittere, nisi propter solam causam fornicationis.* But what if she be guilty of something more heinous (*aliud quid grauius*) than fornication—a poisoner, a murderess of their child, etc., a waster of her husband's substance, etc.? To endure these sins of a woman which are worse than adulteries and fornications will seem irrational; yet to act contrary to the intention of the Saviour's teaching every one will admit to be impious. I contend therefore that He did not command by way of precept that no one should put away his wife save for the cause of fornication, but as explaining the matter He said Whoso putteth away his wife save for cause of fornication makes her commit adultery (*Disputo ergo quia non preceptiue mandauit vt nemo dimittat vxorem excepta causa fornicationis, sed quasi exponens rem dixit Qui dimiserit vxorem excepta causa fornicationis, facit eam mechari*). For indeed so far as in him lies he does make her commit adultery (by giving her an occasion for a second marriage) if he puts her away when she is not an adulteress. . . . *Qua enim ratione adultera est mulier quamuis legitime nubere videatur viro viuente, eadem ratione et vir quamvis legittime accipere videatur dimissam ab aliquo viro, non accipit legitime secundum sententiam christi,* sed magis mechatur, quasi alienam accipiens.

Idem in Epistola ad Romanos li. 6. ca. 7. *Si vero viuentem adhuc priorem virum voluerit mulier relinquere et alij sociari, adultera sine dubio appellabitur.* Et mox—*Morte viri liberatur mulier a lege coniugij, et sociandi viro alij accipit libertatem.*

(3) fol. 146 b EUARISTUS Epistola 2ª: 'Sacerdotes vero . . . innupta permaneat,' where the following is underlined: '*Et sicut vxori non licet dimittere virum suum vt alteri se* (*viuente eo*) *matrimonio societ, aut eum adulteret, licet fornicatus sit vir eius, sed iuxta apostolum, aut viro suo reconciliari debet aut manere innupta.*

(4) fol. 147a-148a. TERTULLIANUS adversus Marcionem 4: 'Sed Christus diuortium iubet [prohibet *corr.* Cranmer] . . . legis occiderat.' Christ forbids divorce saying He who shall have put away his wife and married another will [*sic*] commit adultery. He who shall have married a woman put away by her husband is equally an adulterer: *vt sic quoque prohibeat diuortium, illicitum facit repuditatæ* [*sic*] *matrimonium* . . . Christ answers His own question: Moses for the hardness of your heart etc.: but from the beginning it was not so; quia scilicet *qui marem*

et fæminam fecerat, erunt duo, dixerat, in carne una. Quod deus itaque iunxit, homo disiunxerit? . . . Dico enim illum conditionaliter nunc fecisse diuortij prohibitionem, si ideo quis dimittat vxorem et [*vt corr.* Cranmer] *aliam ducat.* Qui dimiserit, inquit, vxorem et aliam duxerit, adulterium commisit. *Et qui a marito dimissam duxerit, æque adulter est; ex eadem vtique causa dimissam, qua non licet dimitti, vt alia ducatur:* illicite enim dimissam pro indimissa ducens adulter est. *Manet enim matrimonium quod non rite diremptum est. Manente matrimonio,* nubere adulterium est. . . . Certe *quid facit apud te maritus, si vxor eius commiserit adulterium. Habebitne illam? . . .* Sed nec tuum Apostolum sinere coniungi prostitutæ membra Christi. Habet itaque et Christum assertorem iustitia diuortij. Jam hinc confirmatur ab illo Moyses, *ex eodem titulo prohibens repudium quo et Christus, si inventum fuerit in muliere negotium impudicum. Nam et in Euangelio Mathei; Qui dimiserit, inquit, vxorem suam preter causam adulterij facit eam adulterari,* atque adulter censetur: et ille qui dimissam a viro duxerit. *Ceterum preter ex causa adulterij, nec creator disiungit quod ipse scilicet coniunxit. . . . Erubesce etiam disiungens sine eo merito quo disiungi voluit et tuus Christus. . . .* Facta igitur mentione Joannis dominus, et vtique successus exitus eius, illicitorum matrimoniorum et adulteri figura iaculatus est in Herodem, *adulterum pronuntians etiam qui dimissam a viro duxerit:* quo magis impietatem Herodis oneraret: qui *non minus morte quam repudio* dimissam a viro duxerat.

Idem de Monogamia, citens illud Mathei Qui dimiserit vxorem suam praeterquam ex causa adulterij &c hec habet *Nam et nubere legitime non potest repudiata.* Et si quid tale commiserit sine matrimonij nomine non capit elogium adulterij, quia adulterium in matrimonio crimen est.

Et mox. Adulterium est cum quoquo modo disiunctis duobus alia caro immo aliena miscetur.

Et mox. Adeo repudium a primordio non fuit vt apud Romanos post annum vi^c^ vrbis condite id genus duritie commissum denotetur. Sed illi etiam non repudiantes adulteria commiscent. *Nobis etsi repudiemus, ne nubere quidem licebit.*

Et[1] paulo supra. Si mortuo non tenetur, proinde nec viuo: *tam repudio matrimonium dirimente quam morte.*

(5) fol. 148b. Cyprianus ad Quirinum compendio colligens

[1] This last extract is in Cranmer's writing. Before 'Idem de Monogamia' above he also wrote: 'Idem per annos fere sexcentos ab vrbe condita repudium Romæ nullum fuit' but erased it for Morice to supply later.

dogmata christiana, ca. 90: 'Vxorem a viro . . . vxorem non dimittere.' Against divorce or re-marriage after separation.

(6) fol. 148b. LACTANTIUS de vero cultu li. 60 ca 23. Deum asserit in matrimonio duos coniungere in corpus pari iure, ita vt non magis liceat marito aliam accipere feminam, quam feminæ alium capere maritum. Item *adulterum esse qui a marito dimissam duxerit, et eum qui praeter crimen adulterij vxorem dimiserit, vt alteram ducat:* dissociari enim corpus et distrahi deus noluit.' All in Cranmer's hand.

(7) *Ibid.* HILARIUS in Math. can. 4. 'Dictum est autem [so far in Cranmer's hand, then Morice's] Quicumque . . . societate pollueret'; the last sentence '*nullam aliam causam desinendi a coniugio prescribens quam que virum prostitutæ vxoris societate pollueret*' being underlined.

(8) fol. 149a. EPIPHANIUS contra Catharos heresis lix. li. 2. to. 1. 'Licitum est autem . . . . dei viuat.' The man who only marries once is held in higher honour than he who marries twice. *Qui vero non potuit vna mortua contentus* esse . . . *aut seperatione* [*sic*] *ob aliquam malam causam facta, eum diuina scriptura non accusat, si aut vir secunde coniugatur vxori, aut vxor secundo viro,* neque ab ecclesia et vita abdicat, sed suffert propter delibitatem. *Non vt duas vxores simul habeat, altera adhuc superstite sed vt ab vna separatus, secunde, si ita contingat, lege copuletur* diuina scriptura et sancta dei ecclesia eius miseretur, maxime si alias talis pius sit et secundum Legem dei viuat.

Fol. 149b is blank.

(9) fol. 150a-151b. AMBROSIUS super Luc. li. 8. ca. 16. 'Omnis qui dimittit . . . omne coniugium.' ET MOX: 'Noli ergo uxorem . . . abstulit destituto.' *Paterisne oro liberos tuos viuente* [*te*] *esse sub vitrico? aut incolumi matre degere sub nouerca?* What is the Law of God? A man shall leave his father and mother etc. . . . and they shall be both in one flesh. Therefore he who puts away his wife splits his own flesh, divides his body. Moreover this passage shews that the things which have been written by reason of human frailty have not been written by God (a deo). Whence also the Apostle says 'I enjoin, yet not I but the Lord, a wife not to depart from her husband,' and below 'To the rest' he says 'I speak, not the Lord If any brother has an unbelieving wife (infidelem uxorem)' etc. Itaque *vbi est impar coniugium, lex dei non est.* And he added 'But if the unbeliever depart, let her depart.' At the same time this same Apostle said that it was not of the divine law that any union should be dissolved: he neither himself taught it, nor gave authority for desertion *sed culpam abstulit destituto.*

IDEM in epistola ad Romanos. ca. 8. 'Nam que sub viro . . . iustitia terrena.'

IDEM in 1ª Corr. 7. 'Mulier autem . . . alij tradere.' ET MOX: 'His autem qui . . . mulieris vir est.' This is the Apostle's counsel, that if she have departed *propter malam conuersationem viri* let her now remain unmarried, or be reconciled to her husband. But if, he says, she cannot contain herself, because she is not willing to fight against the flesh, let her be reconciled to her husband. *Non enim permittitur mulieri vt nubat, si virum suum causa fornicationis dimiserit aut apostasiæ, aut* si illicite impellente lasciuia usum querat vxoris. In such a case a woman can neither marry nor be brought back to him. 'And the husband not to put away his wife' *subaudiendum autem, excepta fornicationis causa.* And he (the Apostle) did not subjoin, as he did of the woman, 'but if she have departed' that he should remain as he was, quia *viro licet ducere vxorem si dimiserit vxorem peccantem*, because he is not bound down by the law in the same way as the woman. For the man is the head of the woman. ET MOX: 'Quod si infidelis . . . confirmant coniugium.' Christians, in the Apostle's view, are not to relinquish their unions; but if an unbeliever from hatred of God departs, the believer will not be responsible for the dissolution of the wedlock . . . *Si autem ambo crediderint, per cognitionem dei confirmant coniugium.*

IDEM [reference left blank]. 'Nemo sibi blandiatur de legibus hominum. Omne stuprum adulterium est, nec viro licet quod mulieri non licet.' [The reference is *De Abraham patr.*, 1, iv.]

Fol. 152a is blank.

(10) fol. 152b-153a. BASILIUS in moralibus regula 73. Quod nullo modo debet vir, qui legittimo [*sic*] matrimonio cum vxore coniunctus sit, ab ea seperari [*sic*], neque vicissim vxor a viro *nisi illorum alter in adulterio deprehensus sit, nisiue causa aliqua alia intersit que vere aduersus deum pietati officiat.* ca. 1. 'Dictum est autem . . . non dimittat.'

'Quod non licet viro vxore dimissa aliam ducere: neque item vxori vicissim que dimissa sit viro alij nubere.' cap. 2. 'Dico autem vobis . . . adulterat.'

BASILIUS de virginitate. 'Non audis autem . . . corrumpere audet.' *Si enim repudiata est (inquit) propter causam, attamen viuit vir ipsius.* No one is to marry a woman who has been put away, for either there is given to her a time for amendment that her husband may be able to take back his member or for her to pay the penalty by remaining for ever neither widow nor wife for her fault towards her husband.

(11) fol. 153a-154b. HIERONIMUS ad Damasum presbiterum. 'Omnes causationes . . . retinetur.' The Apostle cutting off all disputings has most clearly laid it down that during her husband's life a woman is an adulteress if she marry another.

HIERONIMUS in Math. Ca. 20. 'Dico autem vobis . . . servituti.' Sola fornicatio est que vxoris vincat affectum . . . *Vbicunque est igitur fornicacio, et fornicationis suspitio, libere vxor dimittitur.* But the accusation may be a calumny, so *sic priorem dimittere iubetur vxorem, vt secundam prima viuente non habeat.* . . . His disciples say to Him If the case of a man with his wife is so, it is not expedient to marry. Graue pondus vxorum est, si *excepta causa fornicationis*, eas dimittere non licet. *Quid enim si temulenta fuerit, si iracunda, si malis moribus, si luxuriosa, si gulosa, si vaga, si iurgatrix, si maledica: tenenda erit istiusmodi? Volumus, nolumus, sustinenda est.* Cum enim essemus liberi, voluntarie nos subiecimus servituti.

IDEM aduersus Jouinianum li. 1. fo. 9. f. 'Hiis autem qui matrimonio iuncti sunt, praecipio non ego, sed dominus, Vxorem a viro non discedere. Quod si discesserit, manere innuptam aut viro suo reconciliari etc. Hic locus (inquit) ad praesentem controuersiam non pertinet. Docet enim iuxta sententiam domini, vxorem *excepta causa fornicationis* non repudiandam, et repudiatam, viuo marito, alteri non nubere, aut certe viro suo reconciliari debere.'[1]

IDEM supra in eodem libro. 'Qui semel duxerit vxorem, nisi ex consensu non valet se abstinere, nec dare repudium *non peccanti.*'[1]

IDEM in Epitaphio ffabiole. 'Si arguitur . . . vulnus accepit.' *Si arguitur quare repudiato marito non innupta permanserit*, facile culpam fatebor, dum tamen referam necessitatem. She was young and could not endure perpetual widowhood. *Persuaserat sibi et putabat a se virum iure dimissum*, nec euangelij vigorem noverat, in quo nubendi vniuersa causatio viuentibus viris fœminis amputatur.

(12) fol. 154b. CHROMATIUS in 5[m] ca. Math. 'Cum dicerent . . . est violare.' Vnde non ignorent *quam grave apud deum damnationis crimen incurrant, qui per effrenatam libidinis voluptatem, absque fornicationis causa, dimissis vxoribus in alia volunt transire coniugia. . . . Sed sicut vxorem caste et pure viventem dimittere fas non est, ita quoque adulteram dimittere permissum est, quia ipsam se mariti consortio fecit indignam quae in corpus suum peccando dei templum ausa est violare.*

[1] These two extracts are entirely in Cranmer's hand as additions in a space at the foot of the page left blank by Morice in whose writing are the extracts which precede and follow.

(13) fol. 155a. CHRISOSTOMUS in sermone de libello repudii exponens dictum Pauli 'Mulier alligata est legi' etc. 'Mulier inquit . . . morietur solum etc.' ET MOX. 'Que autem serua . . . perpetrabunt.'

ET PAULO POST in eodem sermone declarans illud Deutr. 24 'Polluta et abhominabilis facta est' etc. ait quod secunde nuptiae viuente priori viro pollutio magis sit quam coniugium. *In qua* etiam sententia Augustinus fuit vt apparet libro secundo ad Pollentinum ca. 6. Quod autem *Chrisostomus* in commentarijs super epistolam ad Corrinthios [*sic*] huiusmodi phrase vtitur 'per fornicationem iam dissolute sunt nuptie, et vir quidem post fornicationem non est vir,' et eum immitatus [*sic*] *Erasmus* similes Locutiones passim vsurpat, Idem Erasmus in suis appologijs [*sic*] tamen Chrisostomum, tum seipsum ad hunc modum intellexisse interpretatur. Sentio, inquit, eam desijsse esse vxorem que se prestitit indygnam vxoris nomine, et coniugij commodis, sicut filius abdicatus negatur esse filius, quod amiserit Jus filij et hominem exuisse dicimus eum qui vehementer est inhumanus. Jus autem coniugij est individua vite societas, tectum, mensa, et lectus communis, rei familiaris in partem administratio, fortunarum omnium consortium, petere debitum, fini liberis etc. Hec que perdidit sua culpa, queso quid habet vxoris.

(14) fol. 155b-157a. AUGUSTINUS[1] in Joh. tract. 9. Sicut coniunctio a deo est, ita diuortium a diabolo fit. Sed *propterea in causa fornicationis licet vxorem dimittere, quia ipsa esse vxor-prior noluit*, quae fidem coniugalem marito non seruauit.

IDEM de fide et operibus ca. 19. 'Quisquis etiam . . . fallatur.' *Et in ipsis diuinis sententijs ita obscurum est, vtrum et iste (cui quidem sine dubio alteram*[2] *licet dimittere) adulter tamen habeatur, si alteram duxerit, vt quantum existimo venialiter ibi quisque fallatur.*

IDEM in sermone domini in monte li. 1. Qui dicit, non licet dimittere vxorem nisi causa fornicationis, cogit retinere vxorem

[1] Fol. 155b begins with the following titles of passages in Cranmer's hand:

AUGUSTINUS ad Pollentium de adulterinis coniugijs to. 6.
Idem in sermone domini in monte to. 4.
Idem de fide et operibus to. 4, ca. 19.
Idem de Retractationibus li. 1, ca. 29 et li. 2, ca. 57.
Idem 83 quest. q. vlt.
Idem de bono coniugali in calce septimi capitis.

Nos. 2-6 (idem in sermone . . . septimi capitis) are scored through, and four extracts and part of the fifth (pp. 113, l. 24-114, l. 12), are written out at length also by Cranmer himself.

[2] The printed texts have "adulteram."

si *causa fornicationis* non fuerit. *Si autem fuerit, non cogit dimittere, sed permittit.* Et infra. Quisquis fornicationis causa vult abijcere vxorem, prior debet esse a fornicatione purgatus. Quod similiter etiam de foemina dixerim. Et mox. Ex quo colligitur, siue dimissa fuerit siue dimiserit, oportere illam manere innuptam, aut viro reconciliari.

IDEM 83 q. ult. q. 'Si dominus . . . deputetur.' Et mox. 'Verumtamen si . . . fornicationis.' Et mox. 'Ubi etiam intelligitur . . . quam alteri nubere.'

IDEM de bono coniugali. ca. 7. 'Vsqueadeo . . . causa cum vxore.' *Vsqueadeo foedus illud initum nuptiale cuiusdam sacramenti res est, vt*[1] *nec ipsa seperatione* [*sic*] *irritum fiat . . . Miror autem si quemadmodum licet dimittere adulteram vxorem, ita liceat ea dimissa alteram ducere. . . .* Si quidem *interueniente diuortio non aboletur illa confederatio nuptialis ita vt sibi coniuges sint etiam seperati, cum illis autem adulterium committant, quibus etiam fuerint post suum repudium copulati,* vel illa viro vel ille mulieri: nec tamen nisi in ciuitate dei nostri in monte sancto eius, talis est causa cum vxore.

IDEM Retractationum ⌜de sermone domini in monte⌝[2] li. 1, ca. 19. 'Item de precepto . . . obedienter audiuit.' What did our Lord mean by 'fornication'? *Nec volo in re tanta tamque ad dignoscendum difficili putare lectorem istam sibi nostram disputationem debere sufficere, sed legat et alia siue nostra que postea scripta sunt siue aliorum melius considerata atque tractata vel ipse si potest ea que hic merito mouere possunt, vigilantiore atque intelligentiore mente discutiat. . . . Et vbi dixi hoc permissum esse non iussum, non attendi aliam scripturam dicentem Qui tenet adulteram stultus et impius est.*

IDEM Retractationum ⌜ad Pollentium⌝[3] li. 2, ca. 57. Scripsi duos libros de coniugijs adulterinis quantum potui secundum scripturas cupiens soluere difficillimam questionem. *Quod vtrum enucleatissime*[4] *fecerim nescio, immo vero non me peruenisse ad huius rei perfectionem sentio,* quamuis multos sinus apperuerim, quod iudicare poterit quisquis intelligenter legit.

IDEM[5] de adulterinis coniugijs li. 2°. Licite dimittitur vxor ob causam fornicationis sed manet vinculum prioris, propter quod fit reus[6] adulterij, quicunque duxerit dimissam ob causam for-

[1] vt: here Morice's writing begins again.

[2] "de . . . monte" added by Cranmer.

[3] "ad Pollentium" added by Cranmer, who marks this extract and the next "b," "a," respectively, for transposition.

[4] "enoclatissime" Morice.

[5] Cranmer has added in margin "32. q. 7." (sc. Decretum Gratiani, Pars II[a], causa XXXII, quaestio vii).

[6] "res" Morice, "reus" Cranmer corr.

nicationis. Sicut autem manente in se [1] sacramento regenerationis, excomunicatur [*sic*] quisquis reus est criminis: ita que seperatur a viro nunquam carebit sacramento coniugij, etiam si non reconcilietur viro. Carebit autem si mortuus fuerit vir eius. Reus vero excomunicationis ideo nunquam carebit regenerationis sacramento, etiamsi non reconciliatus fuerit, quia nunquam moritur Deus, cui est copulatus in baptismo.

Fol. 157b is blank.

(15) fol. 158a Rupertus. No extract given.

Fol. 158b is blank.

(16) fol. 159a-b. A collection of scriptural passages.

Deut. 24. Si acceperit homo vxorem et ⌜concubuerit cum ea,⌝ [2] et non inuenerit gratiam ante oculos eius propter aliquam ⌜rem turpem,⌝ [3] scribet Libellum repudij, et dabit in manu illius, et dimittet eam de domo sua.

Cumque egressa alterum maritum duxerit, et ille quoque oderit eam, ⌜scribat et ipse⌝ [4] ei Libellum repudij et dimittat [5] de domo sua, vel certe mortuus fuerit, non poterit prior maritus recipere eam in vxorem quia polluta est, et abominabilis facta est coram domino, ne peccare facias terram tuam quam dominus deus tuus tradiderit tibi possidendam.

Hierem. 3. Vulgo dicitur Si dimiserit vir vxorem suam, et recedens ab eo duxerit virum alterum, numquid reuertetur ad eam vltra? Numquid non polluta et contaminata erit terra [6] illa? Tu autem fornicata es cum amatoribus multis, tamen reuertere ad me dicit dominus, *et ego suscipiam te.*

Malach. 2. Vxorem adolescentie tue noli despicere. Cum odio habueris eam, dimitte, dicit dominus deus Israel. Operiet autem iniquitas vestimentum eius, dicit dominus exercituum.

Math.[7] 5. Dictum est autem etc. Ego autem dico vobis, quia omnis qui dimiserit vxorem suam excepta fornicationis causa, facit eam mechari, et qui dimissam duxerit, adulterium committit.

et 19. Dico autem vobis, quia quicumque dimiserit vxorem

[1] "se" added by Cranmer.
[2] corr. Cranmer: "habuerit eam" Morice.
[3] corr. Cranmer: "feditatem" Morice.
[4] corr. Cranmer: "dederitque" Morice.
[5] corr. Cranmer: "dimiserit" Morice.
[6] corr. Cranmer: "mulier" Morice.
[7] *Sic.* This and the remaining extracts from scripture are in Cranmer's hand.

suam nisi ob fornicationem, et aliam duxerit, mechatur. Et qui dimissam duxerit mechatur.

Marcus 10. Quicumque dimiserit vxorem suam, et aliam duxerit, adulterium committit super eam. Et si vxor dimiserit virum suum, et alij nupserit, mechatur.

Lucas. 16. Omnis qui dimittit vxorem suam, et alteram ducit, mechatur. Et qui dimissam a viro ducit mechatur.

Ro. 7. Quae sub viro est mulier, viuente viro alligata est legi. Si autem mortuus fuerit vir eius, soluta est a lege viri. Igitur viuente viro adultera vocabitur si fuerit cum alio viro. Si autem mortuus fuerit vir eius, liberata est a lege viri, vt non sit adultera, si fuerit cum alio viro.

1. Cor. 7. No extract written out.

(17) fol. 160a. 32. q. 7. [*sc. Decretum Gratiani*, Pars II^{a} Causa xxxii, Quaestio vii] Ex Gregorio.[1] Quod proposuisti, si mulier infirmitate correpta non valuerit viro debitum reddere, quid eius faciat coniugalis? Bonum esset si sic permanserit, vt abstinentiae vacaret. Sed quia hoc magnorum est, *ille qui non poterit se continere, nubat magis*. Non tamen ei subsidij opem subtrahat, quam infirmitas praepedit, non tamen detestabilis culpa excludit.

(18) *Ibid.* 32. q. 7. [*cf.* 17 *supra*] Ex Concilio [*sc.* Moguntinensi, Maintz, A.D. 829?] Quedam cum fratre viri sui dormiuit, decretum est vt adulteri nunquam coniugio copulentur. *Illi vero cuius vxor stuprata est, licita coniugia non negentur.*

(19) *Ibid.* 32. q. 7. [*cf.* 17 *supra*] Ex Gregorio. Hij vero qui vxores suas in adulterio deprehendunt, non[2] licebit, nec eum, nec eam, aliam vxorem accipere, vel alium virum, quamdiu ambo viu<u>nt. Si autem adultera mortua fuerit, vir eius si vult nubat, tantum in domino. Adultera vero numquam, etiamsi mortuus fuerit vir eius: omnibus tamen diebus vite sue acerrime penitentie lamenta persoluat.

(20) *Ibid.* 32. q. 7. [*cf.* 17 *supra*] Ex decreto Zacharie [Pope, A.D. 741-52] *Concubuisti cum sorore vxoris tue?* Si fecisti, neutram habeas, et si illa que vxor tua fuerit, conscia sceleris non fuit, *si se continere non vult, nubat in domino cui velit.* Tu

[1] *Sc.* Greg. II or III? to Boniface of Maintz? *cf.* Van Espen, *op.* ii, 139, viii, 104. The first two extracts, part of the third, and all the marginal references to "32. q. 7." are written by Cranmer.

[2] non: here Morice's hand begins again.

autem et adultera sine spe coniugij permaneatis[1]: et quamdiu vixeritis iuxta preceptum sacerdotis penitentiam agite.

(21) *Ibid.* 32. q. 7. [*cf.* 17 *supra*] Ex concilio Triburiensi [*sc.* Tribur A.D. 895?]. *Si quis cum nouerca sua dormierit*, neuter ad coniugium potest peruenire: *sed vir eius potest si vult aliam accipere si se continere non potest, similiter si quis cum filiastra sua vel cum sorore vxoris sue dormitauerit, obseruandum est.*

(22) fol. 160b. CONCILIUM ELIBERTINUM [*sc.* Elvira A.D. 305] et habetur 31. q. 1. Si qua mulier[2] in mortem mariti sui cum alijs consiliata sit, et ipse vir aliquem illorum se defendendo occidit: si probare potest ille vir eam ream esse concilij *potest* (*vt nobis videtur*) *ipsam vxorem dimittere, et si voluerit aliam ducere.* Ipsa autem insidiatrix penitentie subiecta, absque spe coniugij maneat.

(23) fol. 161a. CONSILIUM [*sic*] ARELATENSE [*sc.* Arles, A.D. 314] primum habitum tempore Constantini Imperatoris articulo decimo *De his qui coniuges suas in adulterio deprehendunt*, et iidem sunt adolescentes fideles et prohibentur nubere placuit vt *in quantum potest consilium eis detur ne viuentibus vxoribus suis, licet adulteris, alias accipiant.*

(24) *Ibid.* CONSILIUM [*sic*] ELIBERTINUM[3] [*sc.* Elvira, A.D. 305] habitum tempore eiusdem Constantini art. 9. Fidelis femina que adulterum maritum reliquerit fidelem, et alterum duxerit, prohibeatur ne ducat. Si autem duxerit non prius accipiat communionem quam is quem reliquerit de seculo exierit, nisi necessitas infirmitatis dare compulerit.

(25) *Ibid.* CONSILIUM [*sic*] MILEUITANUM[4] [*sc.* Milevum, A.D. 402] cui interfuit Augustinus art. 17. Placuit vt secundum Euangelicam et apostolicam disciplinam neque dimissus ab vxore, neque dimissa a marito alteri coniugantur, sed ita maneant aut sibimet reconcil<i>e<n>tur.[5] Quod si contempserint ad penitentiam redigantur. In qua causa legem imperialem petendam promulgari.

(26) *Ibid.* CONCILIORUM[6] to. 2, fo. 95, in epistola DEUSDEDIT AD GORDIANUM. If a man christen his own childe, they may

[1] "permeneatis" Morice.
[2] "Concilium . . . mulier" by Cranmer, the rest by Morice.
[3] In margin "32. q. 7. ffidelis" Cranmer.
[4] In margin "et habetur 39. q. 7. Placuit" Cranmer.
[5] "reconcileatur" Morice.
[6] This and the following extract are in Cranmer's writing.

not after haue carnal knowlege [*sic*], and within a yeare they may mary [*sic*] to other.

(27) *Ibid.* 30. q. 1. [*sc. Decretum Gratiani*, Pars II^{a}, Causa xxx, Quaestio i] Peruenit.[1] Nullus Christianus suam commatrem in coniugio recipere debet, et qui praesumpserit, anathematis vinculo religetur in perpetuum, nisi penitentiam egerit digne. *Mulieres vero cum separatae fuerint, pro hac illicita re, a proprijs viris totam praecipimus* recipere dotem, quam in die nuptiali recepit, *Et post expletum annum recipiant alium virum, scilicet et vir vxorem.*

C

The third section contains eight questions and a series of answers and counter-answers, and is printed in full below (pp. 122-133). Their character may be summarized briefly as follows:—At the outset we have on fol. 180a the eight questions submitted for consideration. The first four of these may perhaps be in Cranmer's hand (see p. 122, note 1).

fol. 180b, 181a-b, are blank. Then follow:

(1) fol. 169a-b. The first set of answers to the eight questions. These answers take the view that the marriage-tie is dissolved by adultery, and are supported by the citation of three Latin Fathers—Augustine, Tertullian, and Hilary—with the assertion that it is unnecessary to collect others since Erasmus has done so in his annotations on 1 Cor. vii. With this statement should be compared the remarks upon Erasmus' own view contained in the summary of authorities printed above (p. 113). The reference in the first answer (*infra*, p. 122) to the 'factum adulterii,' 'voluntas viri' and the action of the judges should be noted in relation to the bracketed addition to the first of the eight questions (*infra*, p. 122, note 1) which explicitly refers to these things.

The answers are written in an Italian hand, unlike any other in the MS., which a prolonged search in the collections of MSS. of the British Museum and other libraries has entirely failed to identify with any definite person.[2] The same difficulty has also

[1] The extract is also derived from the letter of Pope Deusdedit (A.D. 615-18) to Gordian. In the previous extract "they" means "the father and mother."

[2] A grateful acknowledgement is due to the kindness of Sir G. F. Warner and Mr. J. P. Gilson of the Department of Manuscripts in the British Museum in assisting in the laborious task of comparison and in suggesting possible clues.

proved insurmountable at present in regard to the other hands in the following sets of answers.

fol. 170a-b is blank.

(2) fol. 171a-b, 172a-b, 179a. A set of answers in a different hand, also unlike any other in the MS., giving nineteen reasons why re-marriage after divorce is not lawful. The numbering of the answers (1-19) is in red ink, and is due to the person who has also underscored in red ink significant passages in them (*infra*, pp. 124-128).

fol. 179b is blank.

(3) fol. 173a-b, 178a. A set of answers in nineteen paragraphs numbered by the writer himself. The writing is probably (in spite of some resemblances) not the same as that of (1), though the document must be classed with (1) as being a reply point by point to the nineteen reasons against the lawfulness of re-marriage after divorce which had been given in (2).

Here again passages in the answers are underscored in red, and observations upon some of them are added in the margin in red ink. These observations are certainly in Cranmer's hand (*infra*, pp. 128-131).

fol. 178b is blank.

(4) fol. 174a-b. A fourth set of answers probably written by the same hand as (3) in further explanation of the lawfulness of re-marriage after divorce. The answers are arranged in five paragraphs numbered by the writer, and tend to assume the form of syllogisms. The writer in paragraph 5 lapses into the first person singular: 'Rationem sic formo.' Cranmer has headed the answers 'Quod liceat post diuortium secundum inire coniugium' in black ink and has underscored passages in red, also annotating them in the margin in red ink (*infra*, pp. 131-132).

fol. 177a-b is blank.

(5) fol. 175a-b. A set of answers in the form of very short replies seriatim in five paragraphs to the five arguments adduced in (4). Some of these are underscored in red by Cranmer, and the last is declared by him in a marginal note in red ink to be insufficient (*infra*, p. 133).

fol. 176a-b is blank.

III

THE 'COLLECTIONES' IN RELATION TO CRANMER

Setting aside the doubtful point of the handwriting of the questions (*infra*, p. 122), we find that the headings of two of the sets of answers (2, 4) are written by Cranmer, while three of the

sets (3, 4, 5) contain annotations in the margin in Cranmer's writing, and all except the first have passages underscored in red ink apparently by the author of the marginal annotations. It is therefore not an unfair assumption that Cranmer is responsible for the underscoring not only there but also in the second collection of quotations from authorities given above (pp. 107-118), which is partly in Morice's handwriting and partly in his own. It is convenient as well as logical to deal first with the authorities on which his judgement must have been mainly based, whether his inferences from them were right or wrong.

The first collection of authorities (*supra*, pp. 105-107) calls for no remark save that it appears to be the groundwork on which the fuller second collection was drawn up. It contains nothing which is not in the second collection, and bears no mark of annotation. Neither collection seems to have been drawn up with any other object than that of ascertaining what view might fairly be deduced from the statements and arguments of such authorities as might be available.

When we turn to the second collection, it is clear that none of the authorities quoted, except perhaps Epiphanius, admits the possibility of dissolution of the marriage between two believers for any cause save adultery, and the main points of their arguments are underlined in red. Cranmer has, however, underlined also passages where, as a concession, the re-marriage of the injured party is contemplated, *e.g.*, by Epiphanius (p. 110), by 'Ambrose' (p. 110) in the case of an injured husband but not of an injured wife,[1] by Augustine (p. 113) doubtfully, as also Jerome's excuse for Fabiola (p. 112) that she was young and could not endure perpetual widowhood, that she persuaded herself that she was freed by her husband's sin, 'nec euangelii vigorem noverat.'

Of the series of answers (pp. 122-124) the first, allowing the re-marriage of the injured party, has no annotations or underlinings, while the second in the opposite sense is underlined almost throughout. On the other hand the third series (pp. 128-131), which answers point by point the nineteen reasons given in No. 2 why re-marriage is unlawful, and adopts the standpoint of No. 1, has some very interesting notes. Thus the third reply of the third series that the reason why Mark and Luke do not mention 'stuprum' is because 'stuprum' was never recognized as a ground of divorce by the Mosaic law, since the

[1] It is both curious and important to notice that there is no sign of any suspicion that the commentary on the Pauline Epistles was not written by St. Ambrose, though Erasmus of course had perceived it.

punishment of an adulteress was death, is annotated: 'Hic videntur damnare sententiam suam. And ye answere is to no purpose.' The sixth reply (p. 129) that there is a great difference between wives repudiated by the old law for some trivial cause and those repudiated 'ob ingens flagitii stuprum,' of whom our Lord is speaking, is annotated 'Hic fatentur diuortium a thoro, non a uinculo'; while the seventh answer (p. 129) of the same series has the note: 'Hec similitudo prorsus tollit suam ipsorum rationem, et se suo iugulat gladio.' The attempt, in the thirteenth reply, to evade the argument that Herodias did not cease, by becoming the paramour of Herod, to be the wife of Philip, and is so called by John the Baptist, is noted: 'Male responsum est, neque puto responderi posse.' Finally the fourteenth, seventeenth, and nineteenth replies in this third series (pp. 130-131) are noted as insufficient.

In the fourth series of answers, also designed to support the conclusion that a second marriage is lawful after divorce for adultery, the second and third answers (p. 131) are annotated respectively: 'Ye auntecedent is denyed and not proved' and 'Ye argument is denyed and not proved.'

In the last series of answers which proceeds from those who uphold the unlawfulness of a second marriage after divorce, their last answer (p. 133) is noted as 'not sufficient.'

Whatever may be the occasion which gave rise to this collection of documents, it would seem to follow from this examination that Cranmer was not prepared, at any rate at the time when he made these notes, to adopt the attitude with regard to divorce and re-marriage, and certainly not to use the language in regard to divorce *a mensa et thoro*, which is to be found in the *Reformatio Legum* ('De Adulteriis et Divortiis,' § 19, ed. Cardwell, Oxford, 1850). As he is responsible for that section, these documents must therefore at any rate be earlier than the draft of the *Reformatio* which appears in the Harleian MS., 426.

CLAUDE JENKINS.

The text of the Questions and Answers referred to in the preceding pages is printed below. Italics indicate that the original has been written or underscored in red ink.

THE QUESTIONS

fol. 180a. [1] Quid dirimit matrimonij vinculum?[1]

[2] Quas ob causas dirimi poterit?

[3] An dirimi possit coniugium a thoro et non a vinculo?

[4] Quibus casibus possit sic dirimi?

[5] An exceptio illa (excepta fornicationis causa) etiam in luce marci et pauli locis, qui de his rebus tractant, est subaudienda.[2]

[6] An etiam vxor repudiata[3] propter adulterium alij possit nubere.

[7] An redire ad priorem maritum repudiatæ adulteræ liceat.

[8] An maritus propter adulterium ab vxore casta[4] possit repudiari.

I

THE FIRST SET OF ANSWERS

fol. 169a. 1. Ad primam respondemus ipso adulterij facto matrimonij uinculum dirimi, nam alioquin ob solum adulterium non liceret uiro uxorem repudiare. Voluntas uiri sollicitat iudices, Judices palam faciunt Ecclesiæ uirum licite talem repudiare uxorem.

[1] The questions are not numbered in the MS., and are perhaps in two different hands for 1-4, 5-8. The writer of Nos. 5-8 has added after "vinculum" in No. 1 three possible answers, one beneath the other, *viz.*, "factum adulterii," "factum et voluntas dimittendi," "factum, voluntas separandi, iudicum authoritate, etc." [*sic, ut uidetur, man. sec.*, authoritas *m. p.*].

[2] The question which followed in the next line to "subaudienda" as No. 6 was originally "An dirempto matrimonio vir aliam ducere poterit vxorem il [*pro* illa *in rasura*] repudiata vivente," but it is crossed through apparently in the same ink.

[3] repudiata possit *m. p.*: corr. *m. p.*

[4] "casta," at first omitted, is added above the line by the original hand.

2. Ad secundam respondemus quod ob solam causam stupri dirimitur matrimonij uinculum, cuius ipso quidem facto coniugij dissoluitur nodus: et loquimur de hijs qui sacrosancti matrimonij ius agnoscunt.

3. Ad tertiam respondemus quod non, quia mulier quamdiu uixerit alligata est uiro. Ro. 7°. item ne fraudetis uos inuicem. 1 Cor. 7, item in eodem loco uxori uir debitam beneuolentiam reddat, similiter et uxor uiro. item vir non habet potestatem sui corporis sed uxor, similiter nec uxor habet potestatem sui corporis sed uir.

4. Ad quartam patet in responsione ad tertiam.

5. Ad quintam respondemus quod exceptio ista uidelicet nisi causa stupri est subaudienda in Luca, Marco et Paulo, alioquin manifesta esset pugnantia inter Mattheum et eos.

6. Ad sextam respondemus quod repudiata propter adulterium quia uxor repudiantis desijt esse ob idque libera est sicut aliæ omnes post obitum uirorum potest alij nubere aequo iure quo illae iuxta illud Pauli, si non continent contrahant matrimonium. 1 Cor. 7.

7. Ad septimam respondemus quod non licet repudiatæ adulteræ redire ad repudiantem tanquam alligatae ei iugi uinculo matrimonij.

8. Vltima quæstio ad nos nihil.

Autoritates doctorum admittentium repudium propter adulterium, et post ob eam causam factum repudium nouas etiam priore coniuge superstite nuptias. fol. 169b.

Augustinus tractatu 9° in Ioannem in hæc uerba loquitur, Sicut coniu<n>ctio à deo est ita diuortium à diabolo fit sed propterea in causa fornicationis licet uxorem dimittere, quia ipsa esse uxor prior noluit quæ fidem coniugalem marito non seruauit.

Idem de fide et operibus cap. 19. Quisquis etiam uxorem in adulterio deprehensam dimiserit et aliam duxerit non uidetur æquandus eis qui excepta causa adulterij dimittunt et ducunt. Et in ipsis diuinis sententijs ita obscurum est utrum et iste cui quidem sine dubio alteram licet dimittere adulter tamen habeatur, si alteram duxerit, ut quantum existimo uenialiter ibi quisque fallatur.

Idem in genesi ad literam asserit bonum matrimonij tripartitum esse, fidem, prolem et sacramentum. in fide attenditur ne præter uinculum coniugale cum altero uel altera concumbatur.

Idem de nuptiis et concupiscentia ait fidem nuptiarum Vinculum esse.

Tertullianus li. de Monogamia in hæc uerba loquitur Repudium tam dirimit Matrimonium quam mors.

Hillarius Matth. 5°. hæc uerba habet. Cum lex libertatem dandi repudij ex libelli autoritate tribuisset, nunc merito fides euangelica non solum uoluntatem pacis indixit, uerum etiam reatum coactæ in adulterium uxoris imposuit si alij ex discessionis necessitate nubenda sit, nullam aliam causam desinendi à coniugio præscribens quam quæ viro prostitutæ uxoris societatem polluerit.

Plura de Doctorum autoritatibus hanc causam tuentium nobis dicere superuacaneum esse duximus cum Erasmus abunde eorum testimonia congesserit in suis annotationibus, 1 Cor. 7.

II

THE SECOND SET OF ANSWERS

fol. 171a. Quod non liceat a diuortio facto repudij gratia nouum inire coniugium.[1]

Quia pondus huius disputationis potissimum pendet ex illo loco Matth. 19^no^ videlicet qui dimiserit vxorem suam nisi o[b][2] fornicationem, etc. Opere pretium erit de genuino sensu illius loci exactius disserere et contextus circumstantias diligentius examinare.

1. Primo animaduertendum occurrit quo in tempore et cum quibus christus tunc sermonem habebat. At planissimum est quod *eo tempore apud iudeos cum quibus christus*[3] *tunc sermonem habebat vigebat lex qua morte plectebatur stupri convicta.*[4] consentaneum igitur erit quod secundum vigorem illius Legis praefatus sermo sit interpretandus. *Qua lege obseruata dimittenti ob fornicacionem licebat alteram ducere, nimirum quia morte puniebatur convicta stupri.* ceteris autem de causis propter quas scilicet non inferebatur mors, non fuit omnino licitum.

2. Hec expositio optime concordat Matthæum non modo cum Marco et Luca qui[5] omnino vetant alteram (priore[6] viuente)

[1] The heading is in a similar hand to questions 1-4 *supra*, and not that of the writer of what follows (*cf.* pp. 118, 119).

[2] "of" MS. [3] chrs.

This and the passages following are underlined in red ink.

[5] "Mattheum . . . qui": a correction made above the line before the underscoring in red was made: the corrector is not the same as the writer of the title. The original hand wrote "Matth. cum caeteris Euangelistis qui."

[6] "priore," *m.* 2.: "dimissa," *m. p.*

ducere, nulla exceptione adhibita: verum[1] etiam *cum paulo*[2] *Ro.* 7 vbi docet vinculum hoc non posse disrumpi nisi morte dumtaxat alterius coniugis. *et Corinthiorum* 7 hortatur vt non discedat. quod si discesserit iubet manere innuptam aut viro suo reconciliari: ergo locum illum Matth. de stupro mortis penam annexam habente Intelligere debemus: et sic conveniunt omnia et omnis ambiguitas e medio prorsus tollitur.

3. Perpendatur insuper et illud quod *Matth. primus omnium Euangelium suum scripsit hebreice*[3] propter eos qui ex circumcisione crediderant, teste Hieronimo,[4] deinde post annos aliquot *Marcus petri comes* et discipulus Rhomæ degens ab eis qui non solum ex Judeis verum etiam ex | gentibus erant conuersi fol. 171b.
efflagitatus *suum Euangelium scripsit grece*[5] quod et Alexandrie[6] praedicauit ac docuit, quos *Rhomanos inquam et ægyptios euangelium Matth. non habuisse* vnde illam exceptionem mutuarent argumentis non contemnendis si quis negauerit probari potest. *Quomodo igitur fieri potuit vt Marcus*[7] [et Lucas][8] *truncarent hoc tam insigne saluatoris documentum, tam notabilem tantique ponderis clausulam* (si sic accipiatur vt aliqui[9] eam[10] intelligunt) *praetermitterent sine qua hoc saluatoris documentum recte ne*[*que*][11] *doceri nec*[12] *intelligi potest*, sicut et Lucas postea consimiliter fecit.[13]

4. Praeterea si expendatur illa sententia illata a Christo[14] *quos deus coniunxit homo non separet, videtur habere hunc sensum quod neque Mosys neque alterius cuiusvis hominis authoritas debet aut potest separare*[15] *quos deus coniunxit. Neque Moses mandauit sed neque approbauit vllum repudium fieri legitimæ vxoris.* Tantummodo permisit fieri compulsus scilicet propter duriciem cordis ipsorum. *Attamen illud mandauit vt si omnino quis vellet vxorem dimittere tunc scriberet ei libellum repudij.* et ad hunc modum christus[16] exponit ac interpretatur illam Mosys[17] sententiam.

[1] *om.* "verum," *m. p.*
[2] "paullo," *m. p.*
[3] "hebraice," *m. 2.*
[4] "Hieronymo," *m. 2.*
[5] "graece," *m. 2.*
[6] "Alexandriae," *m. 2.*
[7] "mercus," *m. p.*
[8] "et Lucas" added above the line by the second hand.
[9] "illi," *m. p.*: corr. "aliqui," *m. p.*
[10] "eum," *m. p.*: corr. *m. p.*?
[11] [12] "ne . . . nec," *m. p.*, "neque . . . neque," *m. 2.*
[13] The words "sicut et . . . fecit" are erased by the second hand. The corrector has tried his own hand as follows: "sicut et Lucas postea eandem exceptionem postea omisit," but being dissatisfied has crossed out that also and inserted the words "et Lucas" after "Marcus" above instead.
[14] "x°," MS.
[15] "seperare," *m. p.*
[16] "chrs," MS.
[17] Mosis? *m. p.*

5. Idem convincunt etiam apostolorum verba quae subinferuntur, nimirum illa: *Si sic est causa hominis cum vxore non expedit vxorem ducere. vnde liquido apparet quod apostoli per christi*[1] *sermonem intellexerunt indissolubile esse matrimonij vinculum* et longe arctius constringere fortiusque obligare quam ante id temporis a iudeis æstimabatur.

fol. 172a. 6. *In veteri lege non erat licitum repudiatæ nubere alteri*[2] *viro.* ergo minus licitum est in noua Lege. Nam praeter quam quod nullum Legis verbum id vel præcepit vel expresse permittit, scribitur deut. 24.[3] Si egressa alteri viro nupserit et ille quoque oderit illam vel mortuus fuerit etc non poterit prior maritus recipere eam in vxorem quia polluta est et abhominabilis facta coram domino: polluta nimirum eo quod nupserat[4] alteri viro, priore viro suo viuente. Non enim quicquid permittebatur licitum protinus fuit quia et vsuram accipere ab alienigenis permittebantur Judei, attamen per se et simpliciter illicitum erat.

7. Matth. 5. 19 et Luce. 16. *Qui dimissam duxerit adulteratur*[5] *nimirum quia remanet vxor illius qui dimisit, etiam si ob stuprum dimissa sit*[6]*: Nec magis valet hoc argumentum, qui dimisit vxorem praeter fornicacionem et ducit aliam moechatur. ergo qui dimittit vxorem propter fornicacionem non moechatur,* quam illud scilicet, *qui nouit bonum et non facit peccat, ergo qui ignorat bonum facere et non facit, is non peccat.* Cum in vtroque prior gravius peccat, posterior autem Leuius; minus enim peccat qui propter stuprum repudiat et ducit aliam quam qui præter stuprum repudiat et ducit. Et Leviora[7] quidem[8] sunt peccata ignorantium: attamen peccata sunt: non autem minus peccatum probatur aut permittitur dum maius peccatum vetatur.

Jam quod Matthæus conditionaliter posuit, quicumque dimisit vxorem suam nisi ob fornicacionem et ducit aliam adulterium committit, Marcus et Lucas generaliter sine omni exceptione posuerunt Quicumque dimiserit vxorem suam et aliam duxerit adulterium committit contra eam.

8. *Si exceptio illa referretur etiam ad dimissam sequeretur* hoc
fol. 172b. absurdum | *quod adultera iuste dimissa Libera foret vt nuberet alteri viro et casta falso stupri insimulata atque dimissa non foret Libera vt nuberet alteri. atqui hoc iniquum est.*

9. Rursum doctrina christi impurior esset[9] ac Licentiosior

[1] "x[l]," MS.
[2] "altero," *m. p.*, corr. *m. p.*
[3] "29," *m. p.*, corr. *m. p.*?
[4] "nupserit" *m. p.*: corr. *m. p.*?
[5] "adu. rat," Vulg.
[6] "dimissa it + si modo uixerat," *m. p.*, erasit *m. p.*?
"leniora," *m. p.*
[8] *om.* "quidem," *m. p.*
[9] "esset," corr. *m. p.*, "esse," *m. p.*

quam Mosaica Lex illa permissiua. Nam repudiata semel a Judeo non poterat rursum ab eodem duci in vxorem, at christiana fornicatrix repudiata Libera esset non modo vt[1] ab alio atque alio subinde viro sed etiam a priore marito denuo in vxorem duceretur. quod est absurdissimum.

10. Ad hæc si mœchatur qui castam ducit, nimirum praeter causam fornicacionis repudiatam, multo magis mœchari videtur qui adulteram ob adulterium repudiatam ducit.

11. Ro. 7. Viuente viro mulier alligata est Lege, ergo viuente viro adultera vocabitur, si fuerit cum alio viro.

12. primæ Corinth. 7. dominus praecipit, ne vxor separetur a viro suo, et paulus itidem praecipit vt si forte[2] discedat vel innupta maneat vel viro suo reconcilietur[3]:

13. Si vxor fornicata est, non tamen propterea desijt esse vxor illius in cuius iniuriam fornicata est. *Nam sicut res tua furtim sublata non desinit esse res tua, sed ius habes rem tuam repetendi Ita nec corpus vxoris tuæ quamquam furtim*[4] *alteri alienatum*[5] *desinit esse iuris tui* non magis quam Herodias vxor philippi quamquam abducta et stuprata ab scelerato Herode desijt esse vxor philippi, alioqui Johannes non dixisset Herodi. Non Licet tibi habere *vxorem fratris tui.*[6]

14. Matrimonii vinculum sanctius est magisque inviolabile quam illud quo parentibus adstringimur, sed *quam diu viuimus parentibus sumus obstricti ergo et vxoribus.*

15. Facilis est lapsus in stuprum ergo[7] fragile est et matri- fol. 179a.
monij vinculum quod quovis stupro dissolui potest.

16. praeterea *quos deus coniunxit homo non separet*[8] *ergo stuprum non separabit*[9] *quia stuprum actus est humanus* et diabolicus qui nihil potest contra deum.

17. Non videtur praeterea conuenire cum euangelio vt doceatur stuprum ingentium malorum remedium esse. At *si quovis stupro matrimonium posset dissolui, sequeretur quod stuprum praesentissimum et exoptatissimum esset remedium ad disrumpenda matrimonia, quandocumque non bene conveniunt coniuges. daretur etiam licentia hac racione sæpius permutandi matrimonia* Et multos[10] haud dubie ad stupra provocaret.

[1] *om.* "vt," *m. p.*, suppl. *m. p.*
[2] "forte + [ob crimen?] fornicacionis," *m. p.*, erasit *m. p.*?
[3] "reconciliatur," *m. p.* [4] "furtim + sublata et," *m. p.*, erasit *m. p.*
[5] "alienata," *m. p.*, "-um," corr. *m. p.* [6] Mc. vj, 18.
[7] *om.* "ergo," *m. p.*, suppl. *m. p.*
[8] Matt. xix, 6, Mc. x, 9, sed "quod" pro "quos."
[9] "seperabit," MS. [10] "multo," *m. p.*, corr. *m. p.*?

18. Insuper[1] *haec*[2] *opinio* quod stuprum tantum possit contra divinum hoc et sacrosanctum matrimonij vinculum, Et quod quandocumque vratur quispiam tam paratum semper habeat[3] remedium, *adamussim congruere videtur cum libertate carnis. At non videtur perinde congruere cum sermone crucis* qui docet domare et crucifigere carnem et patienter ferre aerumnas[4] seculi nec non imbecillium[infirmitates][5] equanimiter tolerare. Nam haec[6] documenta haud dubie[7] surdis tunc canerentur.

19. Cupimus Insuper doceri[8] *si cuiuspiam vxor, ut sæpe contingit, diuturno aliquo morbo ita languescat, vt Idonea non sit ad reddendum debitum, quod tunc habebit maritus eius*[9] *remedium, si interim vratur.* Aut si marito idem contigerit *vel in captiuitate teneatur vel diu tam procul abfuerit propter vrgentia negotia vel publica vel priuata* ita vt vxor ad eum accedere non possit *si forte interim vratur vxor, quod tunc remedium habebit.*

III

THE THIRD SET OF ANSWERS

fol. 173a. 1. Principio aduersarij toti sunt in circumstantijs considerandis,[10] interim non animaduertentes se sibi ipsis[11] et non nobis aduersari[12]: nam illa causa quam proponunt aduersarij legitimam esse diuortij causam, nimirum mors, numquam pro causa diuortij habita fuit. Quis enim non[13] nouit post mortem nouas semper fuisse licitas nuptias. ridiculosque nimis faciunt et Christum[14] et legisperitos, pueriliter de re[15] nemini non notissima et nullis umquam controuersa litigantes.

2. Secundo respondemus aduersariis, hanc exceptionis clausulam quæ in Matthæo[16] inseritur, omnino nec debere nec posse tolli, nam maledictus qui addit aut detrahit uerbo dei: arbitra-

[1] "Insuper + videtur," *m. p.*, erasit *m. p.*
[2] "hec," MS.
[3] "habeat," corr. *m. p.*, "debeat haberi," *m. p.*
[4] "erumnas," MS.
[5] *om.* "infirmitates," *m. p.*, suppl. *m.* 2?
[6] "hec," MS.
[7] "dubie" suppl. s. l. *m. p.*
[8] "doceri + ab eis," *m. p.*
[9] "eius + uratur," *m. p.*, "habebit" corr. *m. p.*, erasit vocem utramque, *m. p.*
[10] "consyderandis," MS.
[11] "sibiipīs," MS.
[12] "aduersariis," *m. p.*, corr. *m. p.*
[13] *om.* "non," *m. p.*, corr. *m. p.*
[14] "Chrm̄," MS.
[15] *om.* "de re," *m. p.*, corr. *m. p.*
[16] "Mathaeo," *m. p.*

mur autem nos unum Matthæum [1] sufficientem esse ad stabiliendam aliquam ueritatem, quem et interpretem aliorum esse necesse est, sicut et ipsius Pauli. Ro. 7°. Fatemur enim nisi prius interueniat stuprum, morte sola dirimi matrimonij uinculum. et idem est genuinus sensus Pauli ad Cor. 7°, ubi et admittit separationem [2] infideli discedente à fideli.[3]

3. Tertio respondemus quod Marcus et Lucas probe gnari *repudij Mosaici*, quod ob quiduis potius quam ob stuprum, immo [4] *numquam ob stuprum in usu iudæis erat* (nam in stupri conuictas morte animaduersum semper fuit) apte responderunt simulque succincte, iuxta legis formam, nempe non qualibet de causa etc.

Hic videntur damnare sententiam suam. And ye answere is to no purpose.

4. Quarto, ad id quod aduersarij obijciunt, quos deus coniunxit homo non separet, nos exacte rem perpendentes respondemus [5] inuiolatum esse dei mandatum, quod adultera mulier transgreditur adulterioque se separat a uiro, qui deinceps liber est, *solutusque est coniugij vinculo*, idque domini sententia, qua respondet ob stuprum licitum esse diuortium. atque ita [6] Deus est qui separat,[7] non homo.

5. Quinto, quod attinet ad vinculum matrimonij, nos etiam fatemur cum aduersarijs idem esse longe arctissimum idque docti Christi [8] responso, qui *nullam præter adulterium diuortij causam admittit* indeque esse quod discipuli ita responderint si [9] sic est causa etc.[10]

fol. 173b.

6. Sexto respondemus, quod multum interest inter repudiatas ueteri lege ob leuem quamlibet causam et inter repudiatas ob ingens stupri flagitium de quibus Christi [11] in Euangelicis literis sermo est.

Hic fatentur diuortium a thoro, non a uinculo.

7. Septimo respondemus, quod qui duxerit dimissam ueteri more repudij iudæorum mœchatur. quodque illi introducunt argumentum nostro dissimilimum est. quin istud per omnia nostro similiter formatur Quicumque ciuem uerberat [12] nisi mortis reum et securi percutit, in pacem publicam peccat; ergo quicumque ciuem uerberat mortis reum et securi percutit, in [13] pacem publicam non peccat.

Hec similitudo prorsus tollit suam ipsorum rationem, et se suo iugulat gladio.

[1] "Mathæum," *m. p.* [2] "seperationem," MS.
[3] "ab infideli," *m. p.*, corr. *m. p.*? [4] "imo," MS.
[5] "respondemus," corr. *m. p.*, "scimus," *m. p.*
[6] *om.* "ita," *m. p.* [7] "seperat," MS. [8] "Chrī," MS.
[9] "sic sic," *m. p.* [10] Matt. xix, 10. [11] "Chrī," MS.
[12] "uerberat," corr. *m. p.*, "percutit," *m. p.*
[13] "non in," *m. p.*, corr. *m. p.*

8. Octauo respondemus, quod si quæ iniquitas hinc oriri possit errori adscribendam esse non legis uicio.

9. Nono respondemus, quod *Licentiosa Mosaica lex Christi doctrina penitus aboletur.*

10. Decimo respondemus quod aduersarij iniquissime rem trutinant. nolunt enim uidere quam sit licitum eam ducere quæ non sit alterius coniunx: et quam illicitum eam ducere, quæ alterius adhuc remanet uxor.

11. Vndecimo respondemus ut prius 2°.

12. Duodecimo similiter respondemus ut prius 2°.

13. Decimo tertio respondemus, negando antecedens[1] argumenti illorum. et longe aliter coeunt matrimonia inter uiros[2] et mulieres quam possessiones inter possidentes et res possessas: illic enim uoluntas et mutuus consensus necessario accedit, hic uero minime: neque res aliæ ablatæ culpam admittere possunt, unde[3] sint extra potestatem domini, uxores autem possunt.[4]

fol. 178a. *Male responsum est neque puto responderi posse.*

Ceterum ad exemplum quod adducunt de Herodiade uxore Philippi, dicimus quod uetus nomen uxoris etiamnum illi ascribitur, quod cum primum illa abducebatur uerè illi debebatur, quoque solo nomine iuste peccatum illi impingebatur. neque tamen quicquam uetat quominus nunc desinat esse uxor adulterio contaminata. Quamquam in accusationibus uxoris nomen illis attribuimus, in quo uidelicet respectu crimen perpetratum esse constat: sic in foro iudiciali quiritamur famulum nostrum aut uxorem occisam.

Non sufficienter respondetur.

14. Ad decimum quartum respondemus quod nemo uoluntate fit[5] filius, nulla non uoluntate fit uxor.

15. Decimo quinto respondemus, quod *facile est matrimonij vinculum rumpere*, nam ea est humanæ naturæ fragilitas, neque tamen facile est[6] aut leue matrimonij uinculum. ideoque argumentum illorum negamus.

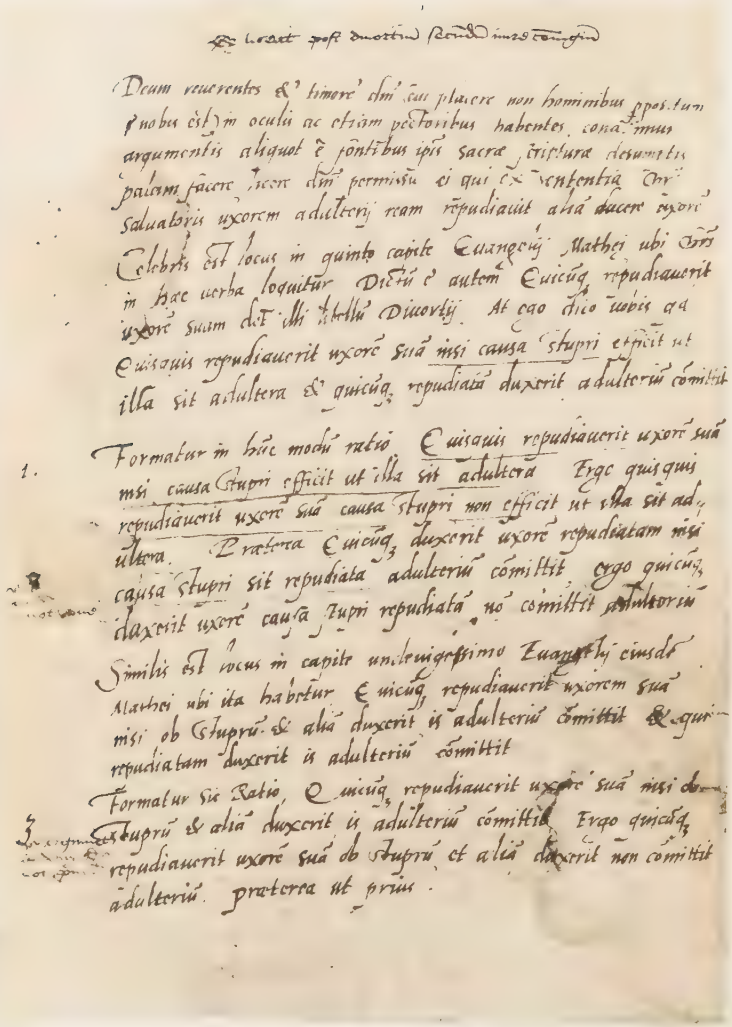
16. Decimo sexto responsum est prius 4°.

Latius desideratur responsum.

17. Decimo septimo respondemus, quis non uidet sic furto homines sibi posse in egestate consulere?

18. Ad decimam octauam[7] respondemus, quod hæc docu-

[1] "anticedens," MS. [2] "hoies," *m. p.*, "uiros," corr. *m. p.*
[3] A letter is erased before "unde."
[4] "possunt | possunt," fol. 173b, 178a.
[5] *om.* "fit," *m. p.*, corr. *m.* 2.
[6] *om.* "est," *m. p.* [7] *sc.* "quaestionem."



MS. LAMB. 1108 f. 174 A. See pp. 131, 132

menta pia et christiana surdis canerentur si scelera impune permittantur et frustra magistratus gladium gestent.

19. Ad decimam nonam[1] respondemus quod inter uxorem morbidam et fornicariam multum interest, et simili modo de mariti uxore captiuitate detenti. *Latius desideratur responsum.*

IV

THE FOURTH SET OF ANSWERS

Quod liceat post diuortium secundum inire coniugium.[2] fol. 174a.

Deum reuerentes et timorem domini (cui placere non hominibus propositum[3] nobis est) in oculis ac etiam pectoribus habentes conabimur argumentis aliquot è fontibus ipsis sacræ scripturæ desumptis palam facere licere domini permissu ei qui ex sententia Christi[4] saluatoris uxorem adulterij ream repudiauit aliam ducere uxorem.

Celebris est locus in quinto capite Evangelij Mathæi ubi Christus[5] in hæc uerba loquitur Dictum est autem Quicumque repudiauerit uxorem suam det illi libellum Divortij. At ego dico uobis quod Quisquis repudiauerit uxorem suam *nisi causa stupri* efficit ut illa sit adultera, et quicumque repudiatam duxerit adulterium committit.

1. Formatur in hunc modum ratio *Quisquis repudiauerit uxorem suam nisi causa stupri efficit ut illa sit adultera. Ergo quisquis repudiauerit uxorem suam causa stupri non efficit ut illa sit adultera.*

2. Praeterea Quicumque duxerit uxorem repudiatam *nisi causa stupri sit repudiata* adulterium committit, ergo quicumque duxerit uxorem causa stupri repudiatam non committit adulterium. Similis est locus in capite undeuigesimo[6] Euangelii eiusdem Mathei ubi ita habetur Quicumque repudiauerit uxorem suam nisi ob stuprum et aliam duxerit is adulterium committit, et qui repudiatam duxerit is adulterium committit. *Ye auntecedent is denyed and not proved.*

3. Formatur sic Ratio, Quicumque repudiauerit uxorem suam nisi ob stuprum et aliam duxerit is adulterium committit. Ergo *Ye argument is denyed and not proved.*

[1] *sc.* "quaestionem."

[2] Title written in a different hand from text, as also are the numbers in the margin (*cf.* p. 119, *supra*).

[3] "propositum est," *m. p.*, corr. *m. p.*

[4] "Chrī," MS.

[5] "Chrs̄," MS.

[6] "undeuigessimo," *m. p.*

quicumque repudiauerit uxorem suam ob stuprum et aliam duxerit non committit adulterium. Praeterea ut prius.

fol. 174b In Euangelio Marci locus est ca. x°. Quicumque repudiauerit uxorem suam et duxerit aliam adulterium committit aduersus illam, et si mulier repudiauerit uirum suum et nupserit alteri adulterium committit. Hic locus collatus cum aliis palam indicat Christum [1] de huiusmodi tantum locutum [2] diuortijs quae nouæ semper sequebantur aut sequi solebant poterantue nuptiæ.

Joannes hanc rem omnem silentio præterit. Marcus et Lucas ita rem tradunt quasi non liceret uiro uxorem dimittere et aliam ducere, intelligentes nimirum diremptum esse adulterij crimine iam perspecto uinculum coniugale, neque deinceps uirum aut uxorem esse eos qui prius fuerant.

Huc spectant et hi [3] loci scripturæ Math. 19° Licetne homini diuortium facere qualibet ex causa? respondens Jesus ait eis Annon legistis quod is qui fecit ab initio masculum et feminam fecit eos, et dixit Propterea deseret homo [4] patrem et matrem et adglutinabitur uxori suæ et erunt duo in carnem unam, itaque iam non sunt duo sed una Caro. Quod ergo deus copulauit, homo [5] ne separet et Mar. x°.

4. Ita formatur ratio *quos matrimonium copulat hi* [6] *sunt una caro, sed qui uel quæ adulteratur desinit una esse caro, Ergo per adulterium rumpitur matrimonij copula.* Minor probatur Pauli authoritate cap. 6 prioris epistolæ ad Corinthios *Qui adglutinatur scorto unum corpus est* etc.

Extat et alius locus ca. 7° prioris Epistolæ Pauli ad Corinth. Si quis frater uxorem habet infidelem et hæc assentitur ut habitet cum illo ne dimittat eam, et mulier qua habet maritum infidelem et is assentitur ut habitet cum ea ne dimittat illum; sanctificatus est enim maritus incredulus per uxorem et sanctificata est uxor incredula per maritum, alioqui filij uestri immundi essent, nunc autem sancti sunt. Quod si incredulus discedit, discedat. non est seruituti subiectus frater aut soror in huiusmodi. sed in pace uocauit nos deus.

5. Rationem sic formo. *Frater aut soror non est subiectus incredulo aut incredulæ recusanti tantum manere et cohabitare, ergo à fortiore non est subiectus adulterium perpetranti.*

[1] "chr̄m," MS. [2] "loquutum," MS. [3] "hij," MS.
[4] "ho°," MS. [5] "ho°," MS. [6] "hij," MS.

V

THE FIFTH SET OF ANSWERS

fol. 175a. Ad 1m argumentum responsio.

Conclusionem veram esse fatemur quia cum sit adultera ante diuortium Diuortium non est causa adulterij.

Quicumque repudiatam[1] duxerit, sine omni exceptione est intelligendum sicut in scriptura ipsa legitur. ad 2m.

ad 3m.

Si secundum Legem tunc vigentem stupri victa morti tradita fuerit, Licebit tunc alteram ducere, alias minime. praeterea *Deus praecepit vt diligas proximum tuum sicut teipsum.*[2] *ergo odio habebis inimicum tuum. Hoc argumentandi genus non est approbandum.*

Quod vero[3] ad genus diuortii attinet *videtur christus diuortia illa post quae nouæ sequebantur nuptiæ reprobasse atque damnasse penitus.*[4] igitur probari[5] non potest per[6] illius sermones licita esse talia diuortia.

ad 4m.

Negamus minorem. Ad locum illum Pauli *Qui adglutinatur scorto vnum corpus est* etc. ita respondetur *Quod Paulus ibidem a scortacione deterrens*[7] *ostendit quam fœdum*[8] *et abominandum sit crimen membra nostra cum sint membra christi* commiscere cum scorto, sed *illa coniunctio est secundum quid et ad tempus dumtaxat et non pro termino*[9] *vitæ neque authorem habens*[10] *deum*, sicut vnio matrimonij quae[11] fit in Christo[12] et ecclesia: et *sicut Baptismus per peccatum non deletur* vt necessarium sit denuo baptizari ad recuperandam salutem *ita neque matrimoniale vinculum per scortacionem dissoluitur.*

fol. 175b. ad 5m. *This answer not sufficient.*

Optime probat quod fidelis ab infideli adulterium perpetranti possit discedere, quod putamus esse verum[13]: quia si altera pars sit infidelis non est consummatum neque perfectum sacramentum, nimirum quia in Christo[14] et ecclesia coniuncti non sunt.

[1] "repidiatam," *m. p.*
[2] "teipsum: + vel Amicum tuum," *m. p.*
[3] *om.* "vero," *m. p.*
[4] "penitus: + ac reprobasse nihil," *m. p.*
[5] "probare," *m. p.*
[6] "non potest per," corr. *m.* 2, "possunt" tantum, *m. p.*
[7] "detterrens deterrens," *m. p.*
[8] "fedum," MS.
[9] "temino," *m. p.*
[10] "habet" (?), *m. p.*, corr. *m. p.*
[11] "que," MS.
[12] "xo," MS.
[13] *om.* "verum," *m. p.*
[14] "xo," MS.

APPENDIX F

SENTENCE OF COURT OF ARCHES IN NEAVE *v.* NEAVE. 19TH JUNE 1666

(Sentences 1664-6. No. 96)

Neave contra Neave.

In Dei nomine Amen. Auditis visis et intellectis ac plenarie et mature discussis per Nos Egidium Sweit Militem et Legum Doctorem Almae Curiae Cantuariensis de Archubus Londoni Officialem Principalem legitime constitutum Meritis et Circumstantiis cujusdam Causae Separationis a Thoro et Mensa quae coram Nobis in Juditio inter Johannem Neave de Campsey Ash in Comitatu Suffolciae partem agentem et querelantem ex una et Elizabetham Neave ejus Uxorem partem ream et querelatam Partibus ex altera vertitur et pendet indecisa legitime procedentibus Partibus praedictis per earum procuratores coram Nobis in Juditio legitime comparentibus Parteque praefati Johannis Neave Sententiam ferri et justitiam fieri pro parte sua, Parte vero memoratae Elizabethae Neave consentiente et eandem sententiam etiam ferri postulante et petente Rimatoque primitus per Nos toto et integro processu in hujusmodi causa habito et facto ac diligenter recensito Servatisque per Nos de jure in hac parte servandis ad nostrae Sententiae definitivae sive nostri finalis Decreti prolacionem in hac parte ferendam sic duximus procedendum fore et procedimus in hunc qui sequitur modum Quia ex allegatis et confessatis coram Nobis judicialiter in hac parte factis et habitis Nobis constat et apparet nonnullas discordias et dissentiones inter dictos Johannem Neave et Elizabetham Neave exortas esse ac magis magisque indies invalescere Et eo quod necessarium et iustum sit pro futura quiete eorundem Johannis et Elizabethae donec invicem reconciliati fuerint, ut sententia definitiva in hac parte pro Separacione dicti Johannis a Thoro et mensa mutuaque cohabitacione et Obsequiorum conjugalium impencione eidem Elizabethae feratur et Justitia in praemissis debite ministretur Idcirco Nos Egidius Sweit Miles et Legum Doctor Judex antedictus Christi nomine primitus invocato ac ipsum solum Deum Oculis nostris praeponentes et habentes deque et cum Consilio Jurisperitorum cum quibus in hac parte Communicavimus praefatum Johannem Neave a Thoro et mensa et mutua cohabitacione et obsequiorum conjugalium impencione praestanda

eidem Elizabethae Neave separandum et liberandum fore debere donec et quousque (Deo sic volente) juvante et disponente, contigerit eos in debitam gratiam redire et se invicem maritali affectione tractare et amplecti pronunciamus decernimus et declaramus Eosdemque Johannem et Elizabetham sic ad invicem ex causis praedictis Separamus Dictumque Johannem Neave a Thoro mensa mutuaque cohabitacione ac obsequiorum conjugalium impencione cum eadem Elizabetha seu eidem Elizabethae Racione praemissorum liberum et immunem fuisse ac sic esse debere donec et quousque Deo sic juvante et disponente contigerit eos in debitam gratiam redire et se invicem maritali affectione tractare et amplecti ad omnem juris effectum pronunciamus, decernimus, et declaramus, Intimante tamen et intimando expresse Inhibentes tam dicto Johanni Neave quam praefatae Elizabethae Neave per praesentes, Ne eorum alter durante vita alterius Matrimonium praetensum cum aliqua alia persona solemnizent seu solemnizari procurent aut praesument seu praesumet, Et quod si maligno spiritu suadente Idem Johannes seu eadem Elizabetha durante vita naturali eorum alterius Matrimonium aliquod praetensum cum aliqua alia persona (Inhibicione huiusmodi non obstante) contraxerit et solemnizaverit seu potius prophanaverit Illud praetensum Matrimonium ex nunc prout ex tunc et ex tunc prout ex nunc nullum invalidum et illigitimum [*sic*] fuisse et esse viribusque et effectu Juris caruisse et carere debere ad omnem juris effectum pronunciamus decernimus et declaramus per hanc nostram Sententiam definitivam sive hoc nostrum finale Decretum quam sive quod ferimus et promulgamus in his Scriptis

Rob: Wyseman
Wm. Lewin P[rocurator]

G. Sweit

Lecta per Dominum Officialem antedictum in Ecclesia de Arcubus 2da sessione termini Trinitatis 19° Iunij 1666 praesentibus ut in actis testibus etc.

APPENDIX AA

SENTENCE OF DIVORCE

(Court of Wards & Liveries. Deeds & Evidences. Box 70. A.)

Elizabeth Dei gr̃a Anglie Francie et Hibernie Regina fidei defensor &c̃ Vniuersis et sing̃lis christifidelibus ad quos presentes l̃re ñre testimoniales pervenerint seu quos infrascripta tangunt seu tangere poterūt quomodol̃it infuturū sal̃m ac fidem indubiam p̃ntibus adhiberi. Vniuersitati vestre presentiū per tenorem notū esse volumus et significamus Qd Nos ad humilem supplicac̃oem dilecti subditi ñri Johannis Stowell armigeri quandam causam divortii sive separac̃onis a thoro et mensa inter eundem Johannem Stowell armigerū ex vna pte et Mariam Stowell al̃s Portmañ eius vxorem ex altera pte audiend̃ et fine debito terminand̃ per l̃ras ñras cōmissionales sive delegatorias sub magno sigillo ñro Anglie sigillat̃ cōmisimus sub tenore sequeñ Elizabeth Dei gr̃a Anglie Francie et Hibernie Regina fidei defensor &c̃ Dilectis nobis in Christo Henrico Harvie Dauidi Lewes Johanni Kenall et Will̃mo Mowse legū doctoribus sal̃m. Porrecta nobis nuper pro parte dilecti subditi ñri Johannis Stowell de Cotherstoñ Bathoñ et Welleñ diocesꝭ Cant̃q̄ provincie armigeri peticio continebat Qd Reuerendus in C̃hro pater D̃ns Gilbertus p̃missione divina Bathoñ et Welleñ E̅pus in quadam causa divortii a thoro et mensa que coram eo inter eundem Joh̃em Stowell partem ageñ et querelañ ex vna et Mariam Stowell eiusdem Joh̃is vxorem partem ream et querelatam ex altera aliq̃diu vertebatur et pendebat indeciꝭ nulliter et inique procedens salaria et exp̃nsas procuratoris eiusdem Marie pro tribus diebus iuridicis tantūmodo exerceñ ad sūmam nimis excessiuam taxauit et ad procedend̃ ad grauiora contra eundem Joh̃em in ea pte se parauit et disposuit in prefati Joh̃is Stowell preiudiciū et gravamen a quibus gravamibus iniquitatibus iniusticiis et iniuriis aliisq̄ ex actis dicti Reuerendi patris colligibilibus idem Johannes ad Reuerendissimū in C̃hro patrem et d̃nm Mattheū p̃missione divina Cantuarieñ Archiep̃m tocius Anglie Primatem et metropolitanū eiusq̄ curie Audiencie causarū et negotiorū Cant̃ Auditorem et aliū Judicem in ea pte competeñ quemcūq̄ rite et l̃time appellauit dictusq̄ Reuerendus pater Cantuarieñ Archiep̃us ex certis causis rac̃onabilibus et l̃timis animū suū in ea pte moveñ hmōi negotiū

appellacõnis vnacū causa principali ac eorū incidẽñ emergẽñ dependẽñ annexis et connexẽ vniuersis audiend examinand et finaliter discutiend vobis prefatis Dauid Lewes et Wiłłmo Mowse coniūctim et diuisim per suas ł̄ras patentes cōmisit Vosq; cōmissarii hmõi onus hmõi cōmissionis in vos acceptatis et ad nōnullos actus iudiciales in eodem processistis. Et licet vos iidem cōmissarii cū ea qua decuit expedicõne ad finalem discussiõem in dicti appellacõnis negotii procedere parauistis et parati fuistis dictusq; Johannes Stowell ad procedend in causa principali omisso hmõi appellacõnis articulo se promptū et paratū obtulerit Atq; partem dce Marie ad consenciend in ea ꝑte sepius ac iteratis vicibus ac obnixe veritatem rei eruend causa requisiuerit pars tamen dce Marie animo dcm Joh̄em Stowell maritū suū qui lite pendente omnes sumptus tam litis q; alimonie pro parte non solū sua verū etiam dce Marie soluere et subire cogit[r] et sumptibus fatigand ac finalem expedicõem hmõi causarū plus iusto differend tam materias et alligacõnes in dco appellacõnis negocio proposuit q; de procedend in negotio principali consentire expresse recusauit in dicti Joh̄is Stowell preiudiciū non modicū et gravamen ac meritorū negotii prin[lis] examinacõnis et discutionis nimis iniustam et iniquam Dilacõem Vnde memoratus Joh̄es Stowell nobis humiłr supplicauit quatenus sibi de remedio in hac parte prouideri oportuno de clementia ñra dignaremur Nos vero hmõi suis peticõnibus inclinati Vobis de quorū doctrina conscientie puritate ac in rebus gerendis dexteritate plurimū in hac parte confidimus ac sp̄ialem fiduciam obtinemus per hec scripta cōmittimus ex mero ñro motu certa scientia et ex sp̄iali gr̄a et favore ñris non obstañ quauis litis pendencia vel coram Ep̄o Bathoñ et Welleñ vel in cuī Audieñ Cant nunc vel antehac existeñ ad amputandas oīm vlteriorū dilacõnū causas et occasiones et mandamus quatenus vos quatuor tres aut duo vr̄m vocatis coram vobis dicta Maria Stowell et aliis de Jure in hac parte vocand in causa principali predict cū suis incidẽñ emergẽñ dependẽñ annexẽ et connexẽ quibuscūq; sūmarie et de plano ac sine strepitu et figura iudicii sola rei veritate inspecta ac mera equitate attenta procedeñ et cognosceñ quod iustū et equū fuerit in eisdem decernatis facientes que in eis decreueritis per ł̄tima iuris remedia firmiter obseruari In cuius rei testimoniū has ł̄ras ñras fieri fecimus patentes Teste me ip̄a apud Westmoñ vicesimo die Maii anno regni ñri sexto per b̄re de priuato sigillo Marteñ. Quarū quidem ł̄rarū ñrar̄ cōmissionaliū vigore piter et aucte supranōiati Dauid Lewes et Wiłłmus Mowse legū doctores Judices a nobis in hac parte ut premittitur delegati ad execucõem ł̄rar̄ ñrar̄ predict rite et ł̄time procedentes post diligentem et maturam dce cause cog-

nicc̃oem tandem die lune vicesimo secundo vĩz die mensis Octobris anno d̃ni milt̃imo quingen^{mo} sexagesimo quinto Regniq$_{\text{q}}$ ñri anno septimo in loco Conſ infra eccl̃iam cath̃em diui Pauli Londoñ notorie situat̃ in Wilt̃mi Say Notarii publici Reg̃rarii ñri testiũq$_{\text{q}}$ inferius nominatorũ preſeñ iudicialr et pro tribunali sedentes partibusq$_{\text{q}}$ predictis per earũ procuratores coram eis l̃time comparentibus supranõiatus Dauid Lewes Judicũ ñror delegatorũ vnus de et cũ expressis consensu et voluntate prenõiati Wilt̃mi Mowse condelegati sui vna secũ tunc ib̃m iudicialr assidentis sentenciam in eadem causa tulit legit et promulgauit in scriptis diffinitiuam pronũciand̃ decernend̃ divortiand̃ absoluend̃ ac cetera faciend̃ prout in eadem continetur Cuius quidem sentencie diffinitiue verus tenor vnacũ libelli in eadem menc̃onati tenore extenso sequitur in hec verba In Dei nõie Amen. Auditis visis et intellectis ac plenarie et mature discussis per nos Dauidem Lewes et Wilt̃mũ Mowse legu doctores in causa infrascripta ac inter partes inferius noĩatas vnacũ venerabilibus viris mag̃ris Henrico Harvie et Johanne Kenalt̃ legũ etiam doctoribus cũ ista clausula quatenus vos quatuor tres aut duo v̄rm t̃c̃ Judices delegatos et cõmiſs̃ per serenissimam in Chr̃o Principem et Dnam nr̃am Dnam Elizabeth̃ Dei gr̃a Anglie Francie et Hibernie Reginam fidei defensorem t̃c̃ sufficienter et l̃time deputatos meritis et circũstanciis cuiusdam cause divortii sive separac̃onis a thoro et mensa que coram nobis inter egregiũ virũ mag̃rm Joh̃em Stowelt̃ de Cothelestoñ Bathoñ et Welleñ dioceſs Cant̃q$_{\text{q}}$ Provincie armigerũ partem ageñ et querelañ ex vna et Mariam Stowelt̃ alſ Portmañ eius vxorem partem ream et querelat̃ partibus ex altera aliqdiu vertebatur vertiturq$_{\text{q}}$ adhuc et pendet indeciſs rite et l̃time procedeñ partibus predictis per earũ procuratores coram nobis in Judicio l̃time compareñ Parteq$_{\text{q}}$ antefati Johannis Stowelt̃ sententiam ferri et iusticiam fieri pro parte sua parte vero añdicte Marie Stowelt̃ alſ Portman iusticiam fieri pro parte sua instanter et respectiue postulañ et peteñ Rimatoq$_{\text{q}}$ primitus per nos toto et integro processu in hac causa habit̃ et facto ac diligenter recensito Seruatisq$_{\text{q}}$ per nos de iure in hac parte servandis ad ñre sentencie diffinitiue sive decreti ñri finalis in hm̃oi causa ferend̃ prolac̃oem sic duximus procedend̃ fore et procedimus in hunc qui sequitur modũ Quia per acta inactitata deducta allegata proposita exhibita probata et confessata comperimus et luculenter invenimus partem añdicti Johannes Stowelt̃ intenc̃oem suam in quodam libello ex p̄te sua iudicialr proposit̃ deduct̃ Cuius quidem libelli tenor sequitur et est talis In Dei nõie amen Coram vobis venerabilibus et egregiis viris mag̃ris Dauide Lewes Henrico Harvie Johanne Kenalt̃

et Wiłłmo Mowse legū doctoribus cū illa clausula quatenus vos quatuor tres aut duo vr̃m in causa infrascripta ac inter partes inferius nominatas Judicibus delegatis et cōmiss̃ regia auc̃te sufficienter et łtime deputat̃ vr̃mve duobus quibuscūq; Pars egregii viri mag̃ri Johannis Stowelł de Cothelestoñ Bathoñ et Welleñ Dioces̃ Cant̃q; provincie armigeri contra et aduersus Mariam Stowelł eius vxorem et contra quemcūq; aliū coram vobis pro eadem in Judicio łtime intervenieñ per viam querele et vobis in hac pte quereland ōnibus melioribus et efficatioribus modo via et iuris forma quibus melius aut efficatius de iure potuit aut potest necnon ad õem Juris effectū exinde sequi valeñ dicit allegat et in hiis scriptis in iure proponit artic̃latim prout sequitur 1. Inprimis vr̃z q̃d dictus Johannes et Maria matrimoniū per verba de p̃nti contraxerūt et illud in facie ecc̃lie solempnizarūt et per multū tempor̃ vt vir et vxor simul cohabitauerūt ac pro veris et łtimis cōiugibus fuerūt coīter dic̃ti tenti habiti noīati et reputati palam publice et notorie. Ac ponit co^{m} di^{m} et de quołit. 2. Item q̃d post et citra hmõi matrimoniū sic vt prefertur contract̃ū et solempnizatū prefata Maria Stowelł mensibus Martii Aprilis Maii Junii Julii Augusti Septembris Octobris Novembris Decembris Januarii Februarii et Martii anno d̃ni miłłimo quingentesimo quinquagesimo octauo quinquagesimo nono sexagesimo sexagesimo primo sexagesima secundo sexagesimo tercio necnon mensibus Martii Aprilis Maii et Junii anno d̃ni miłłimo quingen^{mo} sexagesimo quarto iam curreñ infra pochias de Cothelestoñ predic̃t et Charlic̃h eiusdem dioces̃ aliasq; pochias et loca publica eiisdem vicina convic ina et circūvicina Iꝑoꝛ4ve mensiū annorū et locorū vno siue aliquo diabolico quodam spiritu duc̃ta federe cōiugali spreto et contempto nimiū lasciue et suspiciose vitam degebat cū quodam Johanne Stallynge famulo predic̃ti m̃ri Joh̃is Stowelł atq; nōnulla signa mentis impudice dedit vt non īmerito vehementiss̃ presumc̃ones essent q̃d adulteriū sive fornicac̃oem adinvicem cōmiserūt aut breui cōmitterent vt familiariter nimis eo vtend̃ blande confabuland̃ brachia circa collū eius more meretricio mittend̃ eiusq; cubiculū tam mane q; sero visitand̃ solaq; cū solo ambuland̃ sedend̃ (locis et temporibus quasi dat̃ opera excogitatis atq; ad animos impudicos et amores illicitos et nephand̃ applicand̃ et declarand̃ aptis et idoneis) quemadmodū per probac̃ones in eventu huius litis veniet manifestius declarand̃ Et ponit vt supra. 3. Item q̃d prefata Maria Stowelł sepius ac vicibus interpōitis non solū per predic̃tū Joh̃em Stowelł maritū suū sed etiam per nōnullos vicinos et amicos suos cōiter et amice admonita et rogata fuit vt ab hmõi suspec̃to consortio predic̃t Joh̃is Stallinge abstineret vr̃z per predic̃tū egregiū virū mag̃rm

Johannem Stowell̄ non iniuria nimiam familiaritatem prefate Marie vxoris sue et supradicti Johannis Stallynge famuli sui suspicans et timens his verbis aut eis in effectu non dissimilibus Wyf if yow will̄ not leave these light toyes with my men yow shall̄ not fynde me to be yo^{r} husband Et postea per quandam honestam matronam Elinoram Kellitree de Cotheleston̄ per hec verba aut eis in effectu non dissimilia, Mistris I haue beñ longe tyme tenaunt to my master yo^{r} husband and his auncestors and for the love I beare yow I thincke good to tell̄ yow what I here say that yow lyve suspiciously wth Stallinge yo^{r} servaunte if it be so for the love of god leave yt for if our master shuld knowe of it he wold put yow awaye and then yow were vndoñe And therefore for the love of god putt the knave Stallynge away Et ponit vt supra. 4. Item q̄d đca Maria Stowell̄ annis men̄s et locis predict̄ aut ip̄o^{rum} men̄s annorū et locorū quolīt vno siue aliquo instigante diabolo malis deteriora addens adulteriū seu fornicac̄oem cū predco Joñe Stallynge de facto cōmisit et impudicis vestigiis thorū cōiugalem concalcauit carnaliterq; eundem cognouit et sepius seu vicibus iteratis in amplexibus fornicariis et adulterinis per aliquod tempus cū predicto Joñe Stallynge vixit et cū eodem Johanne vno eodemq; lecto concubuit sepius seu saltem semel Ac ponit vt supra. 5. Item q̄d prefata Maria Stowell̄ et Joñes Stallynge dederūt nōnulla munera et dona hiis qui participes erant concilii aut hiis qui viderant eos suspiciose se gereñ vt quicquid viderant hoc celarent dicto Johanne Stowell̄ vīz Johannes Stallynge dedit cuidam Elizabeth̄ Goore seynge them the said Marie Stowell̄ and the said John Stallynge suspiciously together a paire of blacke satten sleves ruffes gloves pynnes and a clocke diuersis temporibus et alia dona cuidam Arthuro Guntrey seynge them lykewise suspiciously togither a paire of fyne blacke hose lyned with blacke sarcenett and iij^{s} diuersis temporibus. Ac ponit vt supra. 6. Item q̄d supradict̄ Maria Stowell̄ et Joñes Stallynge die martis men̄s decembris aut circiter anno đni milīmo quingen^{mo} sexagesimo tercio vl̄t preterīt̄ inter horas decimam et vndecimam noctis in edibus prefati Johannis Stowell̄ apud Cotheleston̄ predict̄ in secreto cubiculo suo clauso ac solus cū sola in vno et eodem lecto visi et deprehensi fuerunt. Et ponit vt supra. 7. Item q̄d men̄s annis et locis supradcis ip̄o^{rum}ve annorū men̄s et locorū quolīt vno siue aliquo andcus Johannes Stallynge temporibus intempestiuis antelucanis suspiciose in cubiculū andce Marie absente eius marito solebat ingredi et ibi pari cū suspic̄one per longū tempus manere. Et ponit vt supra. 8. Item q̄d men̄s annis et locis predictis aut ip̄orū men̄s annorū et locorū quolīt vno siue aliquo predca Maria Stowell̄ sepius ac iteratis vicibus sūmo

mane a lecto mariti sui predict̃ surgere solebat et in cubiculū predci Johannis Stallynge famuli sui transire ac ibm diu et suspiciose manere Et ponit vt supra. 9. Item q̃d predcis mens̃ annis et locis aut ip̃o tve mens̃ annorū et locorū quolit vno siue aliquo prelibata Maria absente marito suo fuit grauida facta et suspicans se parituram tali tempore quo evidenter constare oporteret non posse esse mariti sui predicti abortiue medicamētorū vi peperit circiter festū Penthecostis contingeñ anno d̃ni millimo quingen^mo sexagesimo primo predict̃ neq; vnq; dco marito suo vel partim edidisse vel se grauidam fuisse patefecit necnon obstetrices hmōi sui partus conscias vt celarent se peperisse tempore predict̃ instanter et obnixe rogauit et requisiuit Et ponit vt supra 10. Item q̃d tam dicta Maria q; prefatus Joñes Stallynge sepius ac iteratis vicibus seu saltem semel confessi sunt et recogno^t in nōnullorū testiū fidedignorū presentiis se adulteriū et fornicac̃oem vt premittitur adinuicem cōmisisse et perpetrasse sicq; confes̃ est et recognouit eorū vterq; siue alter Hocq; fuit et est verū publicū notoriū manifestū piter et famosū Et ponit vt supra. 11. Item q̃d and̃ca Maria Stowell mens̃ annis et locis predict̃ aut ip̃o tve mens̃ annorū et locorū quolit vno siue aliquo cū quodam Johanne Balche tunc añdicti Joh̃annis Stowell mariti sui famulo domestico et aliis nōnullis in eventu huius litis s̃pificand̃ et nominand̃ supiciose incontinenter et incaste versata est et cū illo et illis contra fidem cōiugalem crimen fornicac̃onis et adulterii sepius et iteratis vicibus seu saltem semel cōmisit et perpetrauit Hocq; fuit et est verū publicū notoriū manifestū piter et famosū. Et ponit vt supra. 12. Item q̃d prefata serenissima d̃na ñra Regina de premissis informata ex certis causis rationabilibus et ltimis maiestatem suam in hac pte moveñ causam et causas hmōi vobis d̃nis Judicibus and̃ctis et vr̃m duobus quibuscūq; examinand̃ et terminand̃ per suas ltras pateñ cōmisit prout ex eiisdem penes Reg̃rariū vr̃m remanentibus plenius liquet Et ponit vt supra 13. Item q̃d vos añdicti d̃ni Judices seu vr̃m duo onus execuc̃onis hmōi ltrarū cōmissionaliū in vos debite assumpsistis et iuxta tenorem et effectū earūdem procedend̃ fore decreuistis Ac ponit vt supra 14. Item q̃d prefata Maria Stowell fuit et est Bathoñ et Welleñ dioceſ ac premiss̃ obtentu vr̃e iu^ni d̃ni Judices añdicti in hac pte notorie subdita et subiecta Ac ponit vt supra. 15. Item q̃d premissa ōnia et sing̃la fuerūt et sunt vera publica notoria manifesta piter et famosa Atq; de et super eiisdem laborarūt et in pñti laborant publica vox et fama Vnde facta fide de iure in hac pte requisita ad quam faciend̃ iuxta iuris exigeñ pars dicti Joh̃is Stowell offert se prompt̃ et parat̃ pro loco et tempore congruis et oportunis petitq; eadem pars ius et iusticiam sibi in premissis

et ea concernen̄ quibuscūq; effectuaℓ fieri et ministrari necnon eundem Joℏem Stowelℓ a thoro et mensa ac mutua cohabitac̃one et obsequiorū cōiugaliū impensione d̄ce Marie Stowelℓ vxoris sue propter causas supius declaratas separari et divortiari per vos et vr̃am sn̄iam d̄ni Judices añdic̃ vlteriusq; fieri statui et decerni in premissis et ea concernen̄ quibuscūq; quod iuris fuerit et rac̃onis Que proponit et fieri petit pars ista proponens co^{m} et di^{m} non arctans se ad ōnia et sing̃la premissa proband nec ad onus superflue probac̃onis de quo protestatur sed quātus probauerit in premissis eatenus obtineat in petitis iuris beneficio in ōnibus semper saluo vr̃m officiū d̄ni Judices añdic̃ humiℓr implorando. Quem quidem libellū pro hic lec̃ et inserto habemus et haberi volumus sufficienter et ad plenū fundasse pariter et probasse. Nihilq; effectuale ex parte aut per partem and̄ce Marie Stowelℓ in hac causa deductū allegatū exceptū propositū aut probatū quod intenc̃oem prefati Johannis Stowelℓ in hac p̄te elideret seu quomodoℓit enervaret Idcirco Nos Dauid Lewes legū doctor Judicū delegatorū predic̃ vnus Christi nomine primitus invocato ac ip̄m solū deū oculis n̄ris preponen̄ de et cū consensu et assensu expressis prefati Willmi Mowse college n̄ri vnanobiscū iudiciaℓr et pro tribunali sedeń Ac de et cū consilio Jurisperitorū cū quibus in hac p̄te cōitauimus memoratos Joℏem Stowelℓ et Mariam Stowelℓ aℓs Portman̄ a thoro et mensa ac mutua cohabitac̃one et obsequiorū cōiugaliū impensione hincinde fiend propter adulteriū libellatū et per eandem Mariam perpetratū et in hac causa probatū abinvicem divortiand et separand fore debere et cū effectu separari et divortiari pronūciamus decernimus et declaramus d̄cmq; Johannem Stowelℓ a thoro mensa et mutua cohabitac̃one eiusdem Marie ac obsequiorū cōiugaliū eidem impensione ac alia quauis mutua servitute cū eadem absoluimus Eosq; abinvicem ad effectū predic̃ divortiamus et separamus per hanc n̄ram sententiam diffinitiuam sive hoc n̄rm finale decretū quam sive quod ferimus et promulgamus in hiis scriptis Super cuius quidem sentencie prolac̃one pars ip̄ius Joℏis Stowelℓ armigeri sibi vnū vel plura publicū seu publica Instrumentū sive Instrumenta ab eodem Notario et Reg̃rario n̄ro confeci ℓras quoq; testimonales desuper sibi fieri et concedi requisiuit et postulauit Acta fuerūt premissa ōnia et sing̃la prout supius describuntur et recitantur sub anno d̄ni Regnq; n̄ri mens̄ die et loco predictis Presentibus tunc ib̄m dilectis subditis n̄ris Valentino Dale Roberto Westoń Thoma Yale Laurentio Husey et Roberto Forth̄ legū doctoribus advocatis Thoma Willett Edwardo Bigges Chr̄ophero Smyth et Chrophero Robynson procur̄ibus necnon Willmo Anderson et Simone Smith ℓratis testibus ad premissa viden audiend et testificand

adhibitis speciaℓr atq; rogatis. In quorū õim et sing̃lorū premissorū fidem et testimoniū has ℓras ñras testimoniales in forma publici Instrumenti redactas tenores ñre cōmissionis ac libelli et sentencie diffinitiue predict̃ in se complecteñ supinde fieri Sigilli quoq; ñri quo delegati a nobis Judices ad causas eccliasticas vtuntur appensione cōmuniri mandauimus Dat̃ quoad sigillac̃oem presentiū vicesimo septimo die mensis Octobris annis d̄ni et regni ñri supius descriptis.

Et ego Willmus Say Londoñ diocesis sacra auct̃e regia Notarius publicus Regieq; Maiestatis ad causas eccℓiasticas Regestor et actorum scriba Quia Cōmissionis sive delegationis regie suprascripte expeditioñ Sentencieq; diffinitiue sup̃memorate vigore eiusdem delegationis per supranõiatos venerabiles viros Mag̃ros Dauidem Lewys et Willmū Mowse Judices delegatos lecture et p̄mulgationi, dum sic vt p̄mittitur agerentur et fierent vnacum testibus supius nõiatis p̄sonaℓr interfui eaq; sic fieri vidi sciui et audiui, atq; prout gesta sunt in acta redegi Ideo p̃ntes ℓras testimoniales manu ministri mei de mandato meo fideℓr scriptas veros cōmissionis regie Libelli atq; sentencie diffinitiue supius mentionat̃ tenores in se complecteñ supinde confeci subscripsi publicaui, atq; in hanc publicam testimonialis Instrumenti formam redegi Signoq; meo tabellionali ac nõie et cognõie meis solitis et consuetis subsignaui in fidem et testiom õim et sing̃lor̄ p̄missorū rogatus ad id speciaℓr vt p̄fertur et requisitus.

DAUID LEUES
WILLMUS MOWSE.

Notarial mark LS.

[*Translation.*]

Elizabeth by the grace of God queen of England France and Ireland defender of the faith to all and singular the faithful people of Christ to whom our present letters testimonial shall come or whom the matters within written touch or in any way in the future can touch greeting and undoubted faith to be attached to these presents. We wish it to be known and we signify to your universal body by tenor of these presents that at the humble entreaty of our beloved subject John Stowell esquire we have committed the hearing and termination by a due end of a certain cause of divorce or separation from bed and board between the same John Stowell esquire of the one part and Mary Stowell otherwise Portman his wife of the other part by our letters commissary or delegatory sealed under our great seal of England under the following tenor Elizabeth by the

grace of God queen of England France and Ireland etc. to our beloved in Christ Henry Harvie David Lewes John Kenall and William Mowse doctors of law greeting: a petition presented to us lately on behalf of our beloved subject John Stowell of Cotherston in the diocese of Bath and Wells and in the province of Canterbury esquire contained that the reverend father in Christ Gilbert by divine permission lord bishop of Bath and Wells in a certain cause of divorce from bed and board which was being carried on for some time and was pending undecided before him between the same John Stowell the moving and complaining party of the one part and Mary wife of the same John the accused and defending party of the other part proceeding vainly and unjustly taxed the salaries and expenses of the proctor of the same Mary acting for three court (*juridicis*) days only at a too excessive sum and prepared and disposed himself to proceed to graver acts against the said John in that matter to the prejudice and oppression of the aforesaid John Stowell by reason of which oppressions iniquities injustices and injuries and other consequences to be inferred from the acts of the said reverend father the same John duly and lawfully appealed to the most reverend father in Christ and lord Matthew by divine permission lord archbishop of Canterbury primate of all England and metropolitan and to the auditor of his Court of Audience of causes and matters of Canterbury and to any other competent judge in that matter and the said reverend father the archbishop of Canterbury from certain reasonable and lawful causes moving his mind in that matter committed the business of hearing examining and finally discussing such appeal together with the principal cause and all matters to them incident emergent dependent annexed and connected to you the aforesaid David Lewes and William Mowse jointly and severally by his letters patent and you being such commissioners accept to yourselves the burden of such a commission and have proceeded to certain judicial acts in the same and although you the same commissioners have prepared and are prepared with expedient haste to a final discussion in the matter of the said appeal and the said John Stowell offered himself ready and prepared to proceed in the principal cause the article of such appeal being omitted and has requested the party of the said Mary Stowell to join her consent in that behalf often and on repeated occasions and earnestly for the sake of digging out the truth of the matter nevertheless the said Mary for her part with the intention of fatiguing with the expenses the said John Stowell her husband who while the suit is pending is forced to pay and undergo all the expenses both

of the suit and of alimony not only on his side but on that of the said Mary and of delaying the final expedition of such causes more than is just both put forward matters and allegations in the business of the said appeal and expressly refused to consent to proceed in the principal business to the grave prejudice and oppression of the said John Stowell and to the too unjust and inequitable delay of the examination and discussion of the merits of the principal business whereof the said John Stowell has humbly besought us that we should think fit of our clemency to provide a suitable remedy in that matter Now we being inclined to such his petitions by our mere motion certain knowledge and of our special grace and favour by these writings commit to you in whose learning purity of conscience and dexterity in the transaction of affairs we have much confidence and keep special trust the removal of the causes and occasions of all further delays notwithstanding any suit pendent either before the bishop of Bath and Wells or in the Court of Audience of Canterbury now or hitherto and we command that you four three or two of you calling before you the said Mary Stowell and others rightly to be called in that matter in the aforesaid principal cause with all matters incident emergent dependent annexed or connected therewith whatsoever proceeding and judging summarily and plainly and without ado and form of judgment regarding only the truth of the matter and attending to mere equity decree what is just and right in the same causing what you decree in them to be firmly observed by the lawful remedies of justice In witness of which thing we have caused these our letters to be made patent Witness myself at Westminster the twenty sixth day of May in the sixth year of our reign—by writ of privy seal—by vigour alike and authority of which our letters commissary the above named David Lewes and William Mowse doctors of law judges delegate by us in this behalf as is premised duly and lawfully proceeding to the execution of our letters aforesaid after diligent and mature consideration of the said cause at length on Monday to wit the twenty second day of the month of October in the year of Our Lord one thousand five hundred and sixty five and in the seventh year of our reign openly set in the customary place within the cathedral church of St. Paul London in the presence of William Say notary public our registrar and of the witnesses below named sitting judicially and as a tribunal and the parties aforesaid lawfully appearing before them by their proctors the above named David Lewes one of our judges delegate by and with the express consent and will of the above named William Mowse his fellow delegate

together with him then and there judicially sitting brought read and promulgated in writing his definitive sentence in the same cause pronouncing decreeing divorcing and doing all else as is contained in the same the true tenor of which definitive sentence together with the extended tenor of the libel mentioned in the same follows in these words In the name of God amen the merits and circumstances of a certain cause of divorce or separation from bed and board which revolved and is still being revolved and pends undecided before us proceeding duly and lawfully between the excellent man master John Stowell of Cotheleston in the diocese of Bath and Wells and the province of Canterbury esquire the moving and complaining party on the one part and Mary Stowell otherwise Portman his wife the accused and defending party on the other part having been seen heard and understood and fully and maturely discussed by us David Lewes and William Mowse doctors of law sufficiently deputed by our most serene prince and lady in Christ lady Elizabeth by the grace of God queen of England France and Ireland defender of the faith judges delegate and commissary together with the worshipful men masters Henry Harvie and John Kenall also doctors of law with that clause 'that you four or three or two of you etc.' in the cause above written and between the parties above named the parties aforesaid lawfully appearing before us by their proctors and the party of the aforesaid John Stowell for his part instantly demanding and seeking that sentence be carried and justice done and the party of the aforesaid Mary Stowell otherwise Portman for her part instantly demanding and seeking that justice be done and the whole and complete process in this cause had and done having been investigated from the beginning by us and diligently reconsidered and all things lawfully to be observed in this behalf having been observed by us we have thus thought fit to proceed to bring forward our definitive sentence or final decree in such cause and we proceed in this manner which follows Whereas we understand by things done enacted deduced alleged propounded proved and confessed and find that the cause of the aforesaid John Stowell is clearly set out in a certain libel on his behalf judicially put forward the tenor of which follows and is thus In the name of God amen Before you the worshipful and excellent men masters David Lewes Henry Harvie John Kenall and William Mowse doctors of law sufficiently and lawfully deputed by the royal authority with that clause 'that you four three or two of you' to be judges delegate and commissary in the cause within written and between the parties within named or any two of you the party

of the excellent man John Stowell of Cotheleston in the diocese of Bath and Wells and province of Canterbury esquire against Mary Stowell his wife and against any other person lawfully intervening on her behalf in the trial before you by way of complaint to you who in the pleading of that cause have power to pursue the matter from that point by any better or more effective means way or form of law by which it could or can in law be better or more effectively done and to pursue it to every effect of the law, says alleges and in these writings lawfully puts forward article by article as follows (1) First to wit that the said John and Mary contracted marriage by word each being present and solemnized it before the church and for a long time lived together as man and wife and were commonly called held taken named and reputed to be true and lawful man and wife openly publicly and notoriously and he puts this jointly severally and point by point (2) also that after and this side of such marriage contracted and solemnized as is aforesaid the aforesaid Mary Stowell in the months of March April May June July August September October November December January February and March in the years of Our Lord 1558, 1559, 1560, 1561, 1562, 1563 and in the months of March April May & June in the year of Our Lord 1564 now running within the parishes of Cotheleston aforesaid and Charlinch in the same diocese and other parishes and places neighbouring and lying by and around the same or in one or any of the same months years and places led by some devilish spirit despising and scorning the marriage bond led her life too loosely and suspiciously with one John Stallynge servant of the aforesaid master John Stowell and gave certain signs of a shameless mind so that not undeservedly there were strong presumptions that they had committed or would shortly commit adultery and fornication together as by using him too familiarly talking sweetly together putting her arms around his neck in a meretricious manner and visiting his couch early and late and walking and sitting alone with him (in places and at times thought out as if with care given thereto and fit and suitable for shameless minds and lawless loves and unutterable practices and declarations) as will come to be declared more plainly by proof in the course of the suit and he puts this as above (3) also that the aforesaid Mary Stowell often and on separate occasions was in a common and friendly way warned not only by the aforesaid John Stowell but also by certain of her neighbours and friends and asked to abstain from such suspicious companionship with the aforesaid John Stallinge namely by the aforesaid excellent man master John Stowell suspecting and

fearing not unjustly the excessive familiarity of the aforesaid Mary his wife and the abovesaid John Stallinge his servant in these words or in words not dissimilar in effect Wife if you will not leave these light toys with my men you shall not find me to be your husband and afterwards by a certain honest matron Eleanor Kellitree of Cotheleston by these words or words not dissimilar from them in effect Mistress I have been long time tenant to my master your husband and his ancestors and for the love I bear you I think good to tell you what I hear say that you live suspiciously with Stalling your servant: if it be so for the love of God leave it for if our master should know of it he would put you away and then you were undone and therfore for the love of God put the knave Stallynge away and he puts this as above (4) also that the said Mary Stowell in the years months and places aforesaid or in some or any of the same months years and places at the instigation of the devil adding worse to bad actually committed adultery or fornication with the aforesaid John Stallynge and soiled her marriage-bed with marks of shame and had carnal knowledge of him and often and on repeated occasions lived in fornicatory and adulterine embraces for some time with the aforesaid John Stallynge and slept with the same John on one and the same bed often or at least once and he puts this as above (5) also that the aforesaid Mary Stowell and John Stallynge gave certain presents and gifts to those who were sharers of their counsel or to those who had seen them bearing themselves suspiciously that whatever they had seen they might hide it from the said John Stowell namely John Stallynge gave one Elizabeth Goore seeing them the said Mary Stowell and the said John Stallynge suspiciously together a pair of black satin sleeves ruffs gloves pins and a clock at divers times and other gifts to one Arthur Guntrey seeing them likewise suspiciously together a pair of fine black hose lined with black sarsnet and three shillings at divers times and he puts this as above (6) also that the aforesaid Mary Stowell and John Stallynge were seen and taken on a Tuesday in the month of December or thereabouts in the year of Our Lord 1563 last passed between the tenth and eleventh hours of the night in her secret chamber which was shut in the house of the aforesaid John Stowell at Cotheleston and he alone with her in one and the same bed and he puts this as above (7) also that in the months years and places abovesaid or in some one or any of the same months years and places the aforesaid John Stallynge at unseasonable times before dawn was wont suspiciously to enter the chamber of the aforesaid Mary in the absence of her husband and there with like suspicion to remain

for a long time and he puts this as above (8) also that in the months years and places aforesaid or in some one or any of the same months years and places the aforesaid Mary Stowell often and on repeated occasions was wont to rise at early morn from the couch of her aforesaid husband and to cross to the chamber of the aforesaid John Stallynge his servant and there long and suspiciously to remain and he puts this as above (9) also that in the aforesaid months years and places or in some one or any of the same months years and places the before named Mary in the absence of her husband became pregnant and suspecting that she would bear a child at such a time that it must become plainly evident that it could not be her aforesaid husband's she abortively by the power of drugs gave birth about the feast of Pentecost happening in the year of Our Lord 1561 aforesaid and never made known to her aforesaid husband either that she had given birth or was pregnant and instantly and earnestly asked and required the midwives cognizant of such her childbirth to conceal the fact that she had given birth at the time aforesaid and he puts this as above (10) also that both the said Mary and the aforesaid John Stallynge often and on repeated occasions or at least once confessed and acknowledged in the presence of certain trustworthy witnesses that they had committed and perpetrated adultery and fornication together as is premised and so each or one of them confessed and acknowledged and this was and is true public notorious manifest alike and famous and he puts this as above (11) also that the aforesaid Mary Stowell in the months years and places aforesaid or in some one or any of the same months years and places dealt suspiciously incontinently and unchastely with John Balche then domestic servant of the aforesaid John Stowell her husband and with certain others to be specified and named in the progress of this suit and often and on repeated occasions or at least once committed and perpetrated fornication and adultery with him and them against her wifely faith and this was and is true public notorious manifest alike and famous and he puts this as above (12) also that our aforesaid most serene lady the queen being informed of the premises for certain reasonable and lawful causes moving her majesty in this behalf by her letters patent committed the examination and termination of such cause and causes to you the aforesaid lord judges and to any two of you whomsoever as by the same letters patent remaining with your registrar is made clear and he puts this as above (13) also that you the aforesaid lords judges or two of you have duly taken upon yourselves the burden of the execution of such letters promissory and decree that process

shall be had according to the tenor and effect of the same and he puts this as above (14) also that the aforesaid Mary Stowell was and is of the diocese of Bath and Wells and in regard to the premises is notoriously set under and subject to the jurisdiction of you the aforesaid judges in this matter and he puts this as above (15) also that all and singular the premises were and are true public notorious manifest alike and famous and the public voice and report has and at the present does labour upon the same whence the lawful making of proof in this matter having been required to make which according to the exigencies of the law the party of the said John Stowell offers himself prompt and ready at an agreeable and suitable place and time and the same party seeks that justice be effectively done and administered to him in the premises and in all concerning them and also that the same John Stowell be separated and divorced from bed and board and mutual cohabitation and the payment of conjugal respect of with and to the said Mary Stowell his wife on account of the causes above declared by you and your sentence, lords judges aforesaid, and further that what is right and reasonable be done enacted and decreed in the premises and in all things whatsoever concerning them [all] which that party puts forward and asks to be done jointly and severally not binding himself to prove all and every the aforesaid nor to take the burden of superfluous proof concerning which he protests but humbly imploring that to such extent as he proves the premises he may obtain in what he seeks the benefit of the law in all things saving always your office, lord judges aforesaid The which libel as here read and inserted we hold and wish to be held to have given sufficient foundation and proof and nothing effectual on the part or by the party of the aforesaid Mary Stowell in this cause being deduced alleged excepted put forward or proved which should damage or in any way weaken the intent of the aforesaid John Stowell in this matter Therfore we David Lewes doctor of laws one of the aforesaid delegates first calling upon the name of Christ and putting God himself alone before our eyes of and with the express consent and assent of the aforesaid William Mowse our colleague sitting together with us judicially and as a tribunal and with the counsel of those skilled in law with whom in this behalf we have had conference do pronounce decree and declare that the named John Stowell and Mary Stowell otherwise Portman ought to be divorced and separated the one from the other from bed and board and mutual cohabitation and the paying of conjugal respects from henceforth on account of the adultery set out in the libel and perpetrated by

the same Mary and proved in this cause and we pronounce decree and declare them to be effectually separated and divorced and we absolve the said John Stowell from bed board and mutual cohabitation with the same Mary and from the payment of conjugal respects to the same and from any other mutual bond with the same and we divorce and separate them the one from the other to the effect aforesaid by this our definitive sentence or this our final decree which we bring and promulgate in these writings Upon the production of which sentence the party of the same John Stowell esquire asked and demanded that one or more public instrument or instruments be made for him by the same our notary and registrar and that letters testimonial thereof be made and granted him All and every the premises were done as above they are described and recited under the year of Our Lord and of our reign month day and place aforesaid Present then and there our beloved subjects Valentine Dale Robert Weston Thomas Yale Laurence Husey and Robert Forth doctors of laws advocates Thomas Willett Edward Bigges Christopher Smyth and Christopher Robinson proctors and William Anderson and Simon Smith lettered men specially had and asked to witness to seeing hearing and testifying the aforesaid In faith and testimony of all and singular of which the premises we have ordered these our letters testimonial to be made rendered in the form of a public instrument embracing in itself the tenors of our commission and the libel and definitive sentence aforesaid and to be strengthened with the attachment of our seal which judges delegate by us for ecclesiastical causes use Given as far as the sealing of the presents the twenty seventh day of the month of October in the years of Our Lord and of our reign above described.

And I William Say of the diocese of London by the sacred royal authority notary public and register and scribe of the acts of her royal majesty for ecclesiastical causes because I was present in person with the witnesses above named at the making of the above written royal commission or delegation and at the reading and promulgation of the above named definitive sentence by virtue of the same delegation by the above named worshipful men masters David Lewes and William Mowse judges delegate whilst thus as aforesaid they were done and made and I saw knew and heard them to be thus made and rendered them into acts as they were done therfore I have made subscribed and published the present letters testimonial faithfully written at my command by the hand of my minister embracing in themselves the true tenors of the royal commission

libel and diffinitive sentence above mentioned and have rendered them in this public form of testimonial instrument and have signed it with my notarial sign and with my usual and customary name and surname in faith and testimony of all and singular the aforesaid being specially asked and requested thereto as is aforesaid.

DAVID LEWES.
WILLIAM MOWSE.

Notarial mark L.S.

APPENDIX BB

BISHOP OF BATH AND WELLS TO THE ARCHBISHOP OF CANTERBURY

(Court of Wards and Liveries. Deeds and Evidences. Box 70. J.)

It may please yo^r^ grace to be adũtised that one Johñ Stowell esquier of the diocese of Bathe and Welles, and Justice of peace in the Countie of Soms^te^ was devorced from his wife, because she was counted to be, and so founde, incontinent: sithens w^ch^ tyme he hathe (so farre forthe as ever I herde) lived very honestly and soberlie, by the space of these seven yeres: so longe it is agoo, sithens he was devorced in yo^r^ graces courte of Thearches: his sute is nowe, if it might so like yo^r^ grace; that he might marrye, (notw^th^standinge that shee that was his former wife is yet livinge). The sayd John Stowell is younge, and will by no meanes be reconsiled vnto her that was his wife. I haue not herde that ever he hathe byn spotted w^th^ any suche kinde of cryme. He is a mañ of muche possession and hathe no heire male, by her that was his wife: but only a daughter, w^ch^ he doutethe to be his: and althoughe (as he saithe) the Comoñ lawes and the lawes of the Realme ar against him: yet he is ꝑswaded by the best learned in Oxforde, that the matter beinge confessed, so tryed, and founde by the coñon lawe, the mañ that cõmitted thoffence condemned by the Judges, and by them taxed; that it is lawfull by gods lawe for him to take his rẽmedie. This is the somme of his sute. he wolde haue hadd me to graunt him licence: I answered him: it was above my reache. Yo^r^ grace can better hereof consider then I am able to expresse. And so I cease to truble yo^r^ grace, and shall not faile to cõmitt the same w^th^ my contynuall prayers to the tuic̃on of

the Lorde god almightie. From Bristoll this thirde of Aprill 1572.

Yor graces dailie Oratoure
GILL BATHE & WELLES.

Ryght worshipfull, After my verye Hartie comendacons, these are to desire you to write vnto me youre mynd in those thingz wch foloweth fyrst whether you will stand to be one of the knightes for this plamt, yf you do so, you shall haue my voyces. and I pray you Joyne yor seconde voyce wth a very freind of myne, whom I know you do like well [*words erased*], and one such as hath not onlye a good will to do his Cunttrye good, but also is able to do hit yf occasion serue, none better in this sheare.

second, yf you stand not, pray giue me bothe yor voyces, for too suche as are able to pleasure theyre Conttrye, aswell as any too in this shere, I know [*erasure*] they are yor verye freinds. what yor will is, I pray let me know by this bearer, So I leue you to god, Cotheleston the xiiijth of Aprill 1572.

Yor louing freind
Jo. S.
frind & Cosen.

yf you graunt my fyrst request I will send yõ ye name, yf ye second bothe.

[*Endorsed.*]

To the most reũend father in god my Lord Tharchebusshop of Caunterburie his grace: yeve these.

APPENDIX CC

THE ARCHBISHOP'S LICENCE TO MARRY

(Court of Wards and Liveries. Deeds and Evidences. Box 70. E.)

Mattheus ꝑmissione diuīa Cantuarieñ Archiep̃us totius Anglie Primas et metropolitanus ad infrascript̃ aučte ꝑliamenti Anglie ltime fulcitus dilect' nobis in chro Johñi Stawell de Cothleston in comit̃ Somsette armig̃r et Francisce Dyar virg̃ Salutem gr̃am et Beñ Porrect' nobis ꝑ pte vr̃a supplic̃ annueñ vobiscū vt mr̃oniū inter vos ltime contract̃ seu contrahend in facie pcc̃is ecclie cuiuscūq; absq; aliquibz Bannis Statut' tamen a iure temporibz solem̃ et ꝑ quemcūq; ministrū idoneū sic solem̃ facere

atq; in eodem postmodum remanere lib̃e et licite valeat̃ et possit̃ dūmodo aliud vobis l̃timū non obstiterit impedimentū nec vlla controu̇sia de alio m̃ronio contract̃, quantū ad p̣sonā alterius v̄m attinet mota sit et in lite pendiat adhuc indesisa auc̃te p̄d̄ dispeñ p̄fatoq; ministro m̄roniū illud inter vos modis et temporibz̧ anted̄cis solem̃di nec non quibz̧uis c̄hrifidelibz̧ solem̃ eiusdem interessend̄ l̃iam concedimus et facultatē contrariis canonū institut̃ non obstantibz̧ quibuscūq;, Dat̃ sub Sigillo ad facult̃ vicesimo sexto Die mensis Aprilis anno Dñi Mill̃imo quing̃em° Septuag̃em° Secundo et n̄re Coñis anno Tertiodecimo.

WILLMUS LARKE ad
L.S. Facult̃ Reg̃rarius.

[*Translation.*]

Matthew by divine permission archbishop of Canterbury primate of all England and metropolitan lawfully empowered by authority of the parliament of England for the purposes below written to our beloved in Christ John Stawell of Cothleston in the county of Somerset esquire and Frances Dyar spinster greeting grace and benediction Agreeing with you to the supplication presented to us on your behalf that you may have free and lawful power and ability to make the marriage between you lawfully contracted or to be contracted in any parish church whatsoever without any banns at the customary times nevertheless by law established and by means of any minister fit so to solemnize it and to remain afterwards in the same so long as no other lawful impediment stand in your way and no controversy concerning any other marriage contracted so far as it concerns the person of one of you be moved and remain in dispute still undecided by the authority aforesaid we give dispensation and grant to the beforesaid minister licence and faculty to solemnize that marriage between you by the means and at the times aforesaid and to all faithful Christian people to be present at the solemnizing of the same notwithstanding any contrary canonical institutes Given under the seal for faculties on the twenty sixth day of the month of April in the year of Our Lord one thousand five hundred and seventy two and in the thirteenth year of our consecration.

WILLIAM LARKE
Registrar for faculties.

APPENDIX DD

DEEDS OF INDEMNITY AGAINST LEGAL PROCEEDINGS

(Court of Wards and Liveries. Deeds and Evidences. Box 70. F G & H.)

This Indenture made the xxiij^{ti} Daye of November in the Fiftenth yere of the raigne of oure soueraigne Ladye Elizabeth by the grace of god Quene of Englande Fraunce and Irelande defender of the Faith &c Betwene Edwarde Dyer of Weston in the Countye of Somerset Esquire of the one ptye, And Henrye Portman of Orcharde in the Countye aforesaid Esquire of the other ptye Witnesseth that whereas the said Henrye hath receved of the said Edward Dyer the some of Two Hundred pounes of Lawfull Englishe money and the said Edwarde standeth also bounde by his Deade obligartory to paye vnto the said Henrye the some of Foure hundred poundes of Lawfull Englishe moneye on the Tenth Daye of October next comynge It is nowe Covennted betwene the said ptyes And the said Henrye for hym his executo^{rs} and assignes covennteth and graunteth to and with the said Edwarde his executo^{rs} and assignes That if Mary the syster of the said Henry or any other lawfully auctorysed by her at any tyme duringe the life of John Stawell Esquire and Fraunces the syster of the said Edwarde do comence any sute in the spirituall Courte agaynste the said John Stawell to be restored to the said John Stawell as her lawfull husbande That then the said Henry his executo^{rs} or assignes within one yere nexte after any suche suite comenced shall paye vnto the said Edwarde his executo^{rs} or assignes the some of Syxe hundred poundes of Lawfull Englishe money And further more the said Edwarde Covennteth and graunteth for hym his executo^{rs} and assignes to and with the said Henry his executo^{rs} and assignes That yf the said John Stawell or any lawfully auchorysed by hym at any tyme herafter do comence any suite in the spirituall Courte agaynste the said Marye to haue her agayne as his lawfull wife. That then this pnte Indenture and all the Couennts therin conteyned shalbe voyde And that then and from thensfourth the said Henrye shall kepe and reteyne the said money before receyved and all other somes by hym herafter to be receved to his owne vse without any clayme title or demaunde to be made therunto by the said

Edwarde his executo^{rs} or assignes or any of them. In witnes wherof the said ptyes to theis p̃nte Indentures Enterchaungeablye haue put theire Seales Yeuen the day and yere Firste abouewritten.

Sealed and delivered in the p̃nce of

HENRY HAWLEY
JOHN HEREWODE HENRY PORTMAN
GEORGE SILV
THOMAS HAREWODE

and of me JOHN WELLES ꝑunte to John Dalton Scriveno^{r}. Seal

This Indenture made Twelfthe day of December in the fyftenth yeare of the reigne of owre souereigne Ladie Elizabeth by the grace of god Quene of England Fraunce and Ireland defendor of the faythe &c Betwene John Stawell of Cotheleston in the Countye of Somers^{r} Esquyer on the one partye and Edwarde Dyer of Weston in the Countye aforesaide Esquyer on the other partye Witnesseth that whereas amonge other Covenntes and agreaments it is covennted & agreid betwene the said Edwarde Dyer and Henrye Porteman of Orcharde in the Countye aforesaide Esquyer in one pare of Indentures betwene them had and made bearing date the xxiijth daye of November in the xvth yeare of the reigne of the Quenes maiestie that nowe is And wherein the saide Henrye for him his Exec̃ and assignes Covennteth and graunteth to and wth the saide Edwarde Dyer his Exec̃ and assignes, That if Marye the sister of the saide Henrye or anye other laufullye auc̃thorysed by her at anye tyme during the lif of the saide John Stawell, and Fraunces the syster of the saide Edwarde do comense any sute in the spirituall Courte ageinst the saide John Stawell to be restored vnto the said John Stawell as her laufull husbande that then the saide Henrye his Exec̃ or assignes wthin one yeare next after anye such sute comensed shall paye vnto the said Edwarde his Exec̃ or assignes, the Sōme of Sixe hundred poundes of laufull Englishe monye. It is nowe covennted and agreid betwene the saide John Stawell & Edwarde Dyer, And the said Edwarde for him his Exec̃ and assignes covennteth and graunteth to and wth the said John Stawell his Exec̃ and assignes, that if marye the sister of the abouesaide Henrye or anye other laufullye auc̃thorysed by her at anye tyme during the lif of the saide John Stawell do comense any sute in the spyrytuall Courte ageinst the said John Stawell to be restored vnto the said John Stawell as her laufull

husband, That then the said Edwarde his Exec̃ or assignes wthin one yeare and one moneth next after any sute comensed shall paye vnto the saide John Stawell his exec̃ or assignes the some of Sixe hundred poundz of laufull Englishe monye In wytnes whereof the said John Stawell and Edwarde Dyer to these p̃nt Indentures Enterchaungeablye haue put theire Seales Yeven the daye and yeare first aboue wrytten.

EDW. DYER.

[*Endorsed.*]

Sealed and delyuered in the presence of Seal

JAMES PRIDEAUX
MYLES EYRE.

This Indenture made the Twelfthe daye of December in the fyftenth yeare of the reigne of owre souereigne Ladie Elizabeth by the grace of god Quene of Englande Fraunce & Irelonde defendor of the faythe &c Betwene John Stawell of Cotheleston in the Countye of Som̃s Esquyer of the one partye, and Edwarde Dyer of Westoñ in the Countye aforesaide Esquyer on the other partye Witnesseth that whereas among other Covenntes t̃ agreaments yt is Covenaunted and agreid betwene the said Edwarde Dyer & Henrye Portman of Orcharde in the Countye aforesaide Esquyer in one pare of Indentures betwene them had and made bearing date the 23th daye of November in the fyftenth yeare of the reigne of the quenes maiestie that nowe is And wherein the said Henrye for him his Exec̃ & assignes Covennteth and graunteth to and wth the said Edward Dyer his exec̃ & assignes, That if Marye the sister of the saide Henrye or anye other laufullye aucthorysed by her at anye tyme during the lif of the saide John Stawell, and Frauncis, the sister of the said Edwarde do comense anye sute in the spirituall Courte ageinst the said John Stawell to be restored vnto the saide John Stawell as her laufull husband, that then the saide Henrye his Executors or assignes wthin one yeare next after anye suche sute comensed, shall paye vnto the saide Edwarde his Executours or assignes, the Som̃e of Sixe hundred poundes of laufull Englishe monye It is nowe covennted and agreid betwene the saide John Stawell and Edwarde Dyer, And the saide Edwarde for him, his exec̃ and assignes covennteth and graunteth to and wth the saide John Stawell his Exec̃ and assignes, that if mary the sister of the aboue said Henrye or anye other laufullye aucthorysed by her at any tyme during the lif of the saide John Stawell do comense anye sute in the spirituall

Court ageinst the said John Stawell to be restored vnto the said John Stawell as her laufull husband, That then the saide Edwarde his exec̃ or assignes wthin one yeare and one moneth next after anye suche sute comensed shall paye vnto the saide John Stawell his Exec̃ or assignes the Som̃e of Sixe hundred poundes of laufull Englishe monye In wytnes whereof the said John Stawell and Edwarde Dyer to these p̃nt Indentures Enterchaungeablye haue put theire Seales Yeven the daye and yeare first abouewritten.

L.S. JOHN STAWELL.

Sealed & deliu̇d in the presence of those whose names are vndwritten.

MYLES EYRE
GEORGE DORMAN.

APPENDIX EE

MARY PORTMAN'S PETITION FOR HER DOWER

(Court of Wards and Liveries, Pleadings. Mich: 11 James I. Bundle 96.)

To the right honorable S^{r} Robert Cecill Knight Lord Cecill of Essenden principall secretary to the Kinges mãtie and m^{r} of the Kinges mãties Court of Wards and Lyveries.

9 June 1604. Humblie Complaining sheweth vnto your good Lordshipp your Oratrix Dame Mary Stowell, widow, late wyef of S^{r} John Stowell the elder of Cotheleston in the Countie of Som̃set knight deceased. That whereas the said S^{r} John Stowell was in his lief time lawfully seized in his demeane as of Fee, of and in the Mannor, Capitall messuage and demeanes of Cothelestone in the said Countie of Som̃set, and of and in divers other Mannors, lands, Tenements and hereditaments of great value within the Counties of Som̃set, Dorset, Devon and Cornewall, some parte of which landes and tenemẽts were, and are holden of the Kinges service in chieff And so being sezed, he the said S^{r} John Stowell the elder maried, and tooke to wief your said Oratrix after which mariage they lived together many yeres and had issue a daughter now deceased, duringe which Coverture betweene them and in the lyef of your Oratrix he the said S^{r} John Stowell contracted matrimony with one M^{ris} Frauncis Dyer and by her had issue a man child whome he named John Stowell after his owne name who alsoe was lately

made Knight by the Kinges mãty And for that the said Sr John Stowell the younger for causes apparant could not inherit the said Mannors lands and hereditaments as heir to the said Sr John Stowell the elder by lyneall discent The said Sr John Stowell the elder did in his lyef time convey and assure all his said mannors lands tenements and hereditaments or the greatest parte therof to the vse of himselfe for the terme of his lyef and after to the vse of the said Sr John Stowell the younger and the heires males of his body with divers other vses in Remainder to others of his name the certeinty whereof your Oratrix knoweth not wherevppon the possession of the same mannors lands and tenements by the statute in that behalf made in the seaven and twentieth yere of the Raigne of the late King Henry the eight was transfferred to the said Sr John Stowell the elder for the terme of his lyef with Remainders over in forme aforesaid And afterwards the said Sr John Stowell the elder being so seized as aforesaid died of such estate seized vpon whose death your said oratrix had and yet hath a lawfull right and title of dower to the third parte of all the mannors lands tenements and hereditaments which were of the said Sr John Stowell her late husband Neverthelesse the said Sr John Stowell the younger entred into all the said mannors lands tenements and hereditaments by force of the said Conveyance and was therof seised by vertue of his said Remainder And for that there grew no title of wardshipp, nor primer seizen of any parte of the premisses to our said Soveraigne lord the Kinges maiesty vpon the death of the said Sr John Stowell the elder by meanes of the said Conveiance as it was then conceaved neither was there any office found to intitle the Kinges maiestie to any wardshipp or primer seisyn for wante of which office your said oratrix could not have any write de dote assignanda vppon the death of the said Sr John Stowell the elder And for that your said oratrix was denied and deforced of her said dower by the said Sr John Stowell the younger she therfore pursued severall writes of dower vnde nihill habet against the said Sr John Stowell the younger directed to the shryves of the said severall counties which wrytes dependinge the said Sr John Stowell the younger being seized of the premisses of such estate as aforesaid about the feast of the purificacoñ of St Mary the Virgin now last past died therof so seized by whose death all your said Oratrix writes of dower were abated And the said mannors lands tenements and hereditaments discended and came to John Stowell esquior sonne of the said Sr John Stowell the younger being vnder age and in warde to our said soveraigne Lord the Kinges maiesty that now is where vppon your oratrix knowinge

that the dying seized of the said Sr John Stowell the younger and the said title of wardshipp would then shortly be enquired of by wryte or commission to that purpose to be awarded on his said maiesties behalf and that there would be opposycon against your Oratrix and against her said tytle of dower by the friends and kynred of the said warde she therevppon became an humble petitioner vnto your Lordshipp that shee might be received at the time of the same Inquisicon by her learned Counsell to give in Evidence her said mariage and title of dower that the same beinge found by the Jury and certifyed into the Kings maiestyes honorable courte of Chauncery your said Oratrix might have and receave such ordinary course of Justice for the Recovery of her said dower as to the widow of every of the kinges maiestyes tenants is vsually graunted in the lyke case Vnto which peticion yt pleased your honor to subscribe your assent and direction that yt should be so done accordingly And for the better effecting thereof according to Justice It pleased your Lordshipp to write your honorable lres of direction vnto the Feodary and Escheator of the said County of Somset in that behalfe Sithens which tyme a Commission in the nature of a Diem Clausit extremum vppon the death of the said Sr John Stowell the younger beinge by Warrante of this Courte awarded out of the Kinges Maties Courte of Chaunceryе and directed to John Coles esquier Feodary of the said County of Somerset and to —— [*sic*] Colson gentleman Escheator of the same County and to divers other Commissioners strangers that were drawen out of other Counties was appointed to be executed and by vertue of the same Comission the said Feodary and Escheator and other the said Commissioners mett at Yevill in the said County of Somset on Thursday the twelth day of Aprill last past for the execution of the same Commission At which tyme and place a Jury beinge Retorned impannelled and sworne before the said Feodary Escheator and other Commissioners and being then and there charged to Inquire of what lands the said Sr John Stowell the younger died seized and by what tenures they were holden and who was his next heire, and of such other points and circumstances as in that behalfe apperteyned And Evidence beinge then and there given by learned Counsaill there attending on the behalf of the Kinges matie and the said warde, that the said Sr John Stowell the elder was seized of and in the said mannors lands and tenements in his demeane as of Fee and so seizsed made severall Conveyances therof To the vse of himself for the terme of his lyef with Remainder over to the said Sr John Stowell the younger in taile and so there vppon from and after the deceasses of the said

Sr John Stowell thelder and Sr John the younger They deduced downe the Inheritance of the said mannors by discent to the said John Stowell the warde as sonne and heire to the said Sr John Stowell the younger therby to intytle his matie to the wardshipp of the said heire and his lands which thinges being so given in evidence and then and there accepted and allowed by the said Jury and Commissioners to be found by Inquisition your said Oratrix for that the foundation of the tytle then and there given in Evidens for his maty and for the said warde moved from your said Oratrixes husband She by her learned Counsell did deliu vnto the said Commissioners your honors direction subscribed vnder the said peticon and also signifyed by your said honorable letters to the same Commissioners that your Oratrix her wittnesses and prooffs for her said mariage and tytle of dower might be Received and given in Evidens to the same Jury and be found in the saide Inquisition according to her prooffes And albeit the said Escheator and Feodary beinge two of the same Commissioners thought it very Requisite and Reasonable yet the greater number of the same Commissioners Ruled them over by voyces and would by no meanes assent that the said Jury should inquier therof notwithstandinge the Justice and Right of your said Oratrixes cause and notwithstanding your honors said direction By meanes whereof your said Oratrix is put to great delay about the obteyning of her said dower to her great losse and preiudice and against right and equity In tender consideracon wherof and to thend that your said Oratrix by the iustice and equity of this honorable courte may obtaine her dower in the lands and possessions of her said late husband according to her Right She humblie prayeth that either she may be admitted by proves and testimony to be examined in this honorable Courte to prove her mariage with the said Sr John Stowell the elder and her cohabitacon with him many yeres before his acquaintance with the said Frauncis Dyer. And vppon suche prooffe made that yt would please your lordshipp to Awarde your warrante vnto the Chauncery for a write of dote assignanda to be awarded vnto her out of the Chauncerye or else that yt may please your honor to give order vppon the death of the said Sr John Stowell the elder that a write of mandamus for that it is more than a yere past sithence his death may be awarded to the Escheator of the said County of Somset to Inquier of the premisses or by any other lawfull meanes that your lordshipp shall thinke fitt and the same to certify into this honorable Court that therevppon yor said Oratrix may be endowed of the said mannors lands and tenements wherof shee is endowable by the lawes of this Realme

and may be restored to the meane profitts therof ever since the death of her said late husband and alsoe that such further order and direction may be taken therein as to Justice and equity shall appertaine And your said Oratrix shall dayly pray for your Lordshipps long lyef and increase of much honor.

JA: HYDE.

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